
LOAN NUMBER ____-PRC

PROJECT AGREEMENT

(Shaanxi Qinling Biodiversity Conservation and Demonstration Project)

between

ASIAN DEVELOPMENT BANK

and

SHAANXI PROVINCIAL GOVERNMENT

DATED _____

PAL:PRC 39321

PROJECT AGREEMENT

PROJECT AGREEMENT dated _____ between ASIAN DEVELOPMENT BANK (hereinafter called ADB) and SHAANXI PROVINCIAL GOVERNMENT (hereinafter called SPG).

WHEREAS

(A) by a Loan Agreement of even date herewith between the People's Republic of China (hereinafter called the Borrower) and ADB, ADB has agreed to make to the Borrower a loan of forty million Dollars (\$40,000,000) 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 SPG and that SPG agrees to undertake certain obligations towards ADB as hereinafter set forth; and

(B) SPG, 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) SPG shall, and shall cause the IA to, carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental and biodiversity conservation practices.

(b) In the carrying out of the Project and operation of the Project facilities, SPG shall, and shall cause the IA to, perform all obligations set forth in the Loan Agreement to the extent that they are applicable to SPG and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. SPG shall make available, promptly as needed, the funds, facilities, services, equipment, 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, SPG shall, and shall cause the IA 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, Works and consulting 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, Works or consulting 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. SPG shall, and shall cause the IA to, carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. SPG 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) SPG shall, and shall cause the IA to, 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, SPG shall cause the IA to insure, 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. SPG shall maintain, or cause to be maintained, records and accounts adequate to identify the Goods, Works and consulting 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 SPG shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) SPG 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 Onlending Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB and SPG 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, SPG and the Loan.

Section 2.08. (a) SPG 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, Works and consulting services and other items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of PMO and the IA to the extent relevant to the Project; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, during Project implementation period, SPG shall furnish to ADB semi-annual 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 six months under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress for the following six months. In addition SPG shall furnish to ADB a brief report three months prior to each semi-annual report summarizing contract awards, disbursements and physical progress to cover the three months under the review.

(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, SPG 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 SPG of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) SPG shall, and shall cause the IA to, (i) maintain separate accounts for the Project and for its overall operations; (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 auditors externally appointed according to the relevant regulations of the Borrower whose qualifications and experience are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than six (6) 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 imprest account/statement of expenditures), all in the English language. SPG 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) SPG shall enable ADB, upon ADB's request, to discuss SPG's financial statements and its financial affairs from time to time with the auditors appointed by SPG pursuant to Section 2.09(a) hereabove, 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 SPG unless SPG shall otherwise agree.

Section 2.10. SPG shall enable ADB's representatives to inspect the Project, the Goods and Works financed out of the proceeds of the Loan, all other plants, sites, properties and equipment of SPG and the IA and any relevant records and documents.

Section 2.11. (a) SPG 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 business.

(b) SPG shall at all times conduct its business in accordance with sound administrative, financial, environmental and biodiversity conservation practices, and under the supervision of competent and experienced management and personnel.

(c) SPG 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, biodiversity conservation, and maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, SPG 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, SPG 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, Works and consulting 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, SPG shall, and shall cause the IA to, duly perform all its obligations under the Onlending 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 the Onlending Agreement.

Section 2.15. SPG shall cause the IA to promptly notify ADB of any proposal to amend, suspend or repeal any provision of its Charter 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 SPG 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) 636-2534.

For SPG

Shaanxi Provincial Development and Reform Commission
Xincheng
Xi'an
The People's Republic of China

Facsimile Number:

0086-29-87291248.

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 SPG may be taken or executed by its Governor or by such other person or persons as he shall so designate in writing notified to ADB.

(b) SPG 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.

ASIAN DEVELOPMENT BANK

By _____

SHAANXI PROVINCIAL GOVERNMENT

By _____
Authorized Representative

SCHEDULE

Execution of Project; Financial Matters

Implementation Arrangements

1. SPG shall be the EA, and shall, through the Project Leading Group set up in SPG, provide overall guidance and coordination, and through the PMO set up with Shaanxi Provincial Development and Reform Commission, carry out direct implementation of the Project. QNBG shall be the IA, responsible for day-to-day implementation of the Project.
2. The PLG shall be chaired by a Vice Governor, comprise representatives from Shaanxi Provincial Development and Reform Commission, Shaanxi Provincial Finance Department, SFB, Shaanxi Provincial Audit Department, Shaanxi Tourism Bureau, and Xi'an Municipal Government.
3. The PMO shall support the EA and shall be responsible for (a) overseeing all implementation matters; (b) preparing annual work plans and budgets in consultation with the EA and IA; (c) supervising procurement according to ADB policies and guidelines; (d) maintaining Project accounts; (e) preparing and submitting to ADB applications for withdrawals; (f) monitoring physical and financial progress including benefits and costs to beneficiaries; and (g) ensuring adequate and timely counterpart financing.

Counterpart Financing

4. SPG shall ensure that (a) all domestic financing necessary for the Project is provided in a timely manner, and (b) additional counterpart financing is provided in the event of any shortfall of funds or cost overruns to complete the Project.

Change of Ownership

5. In the event that any change in ownership of the Project facilities; or any sale, transfer, or assignment of the shares of the IA is anticipated, SPG and the IA shall consult with ADB at least six (6) months prior to the implementation of such change. SPG and the IA shall ensure that such change be carried out in a lawful and transparent manner.

Land Acquisition and Resettlement

6. SPG and the IA shall ensure that (i) the RPs are implemented in accordance with their terms; (ii) all land and rights-of-way required for the Project are made available in a timely manner; (iii) the provisions of the RPs including compensation and other entitlements for APs shall be implemented in accordance with all applicable laws and regulations of the Borrower and ADB's *Involuntary Resettlement Policy* (1995); (iv) compensation and resettlement assistance are given to the APs prior to dispossession and displacement; (v) the timely provision of counterpart funds for land acquisition and resettlement activities; (vi) any obligations in excess of the RP budget estimates are met; and (vii) the APs shall be at least as well off as they would have been in the absence of the Project.
7. SPG and the IA shall ensure that the inhabitants of QBCDA are (i) provided support to improve the environmental sustainability of their livelihood practices without adversely

Schedule

affecting their income and living standards; and (ii) unsustainable activities shall only be stopped when they have been replaced with beneficial livelihood alternatives. If any resettlement impacts should occur to the inhabitants of QBCDA, SPG and the IA shall ensure that the RP is submitted and approved by ADB in accordance with ADB's *Involuntary Resettlement Policy*.

8. SPG and the IA shall also ensure that (i) adequate staff and resources are committed to supervising and monitoring the implementation of the RPs, providing to ADB quarterly reports on the implementation, and a resettlement completion report; (ii) an independent agency acceptable to ADB is engaged to carry out investigations to monitor progress annually and to evaluate results through annual survey updates for two (2) years after completion of resettlement, and forward reports to ADB and SPG simultaneously; and (iii) data are disaggregated by gender, and monitoring includes gender impacts and vulnerable groups.

Poverty Reduction

9. SPG and the IA shall cause the contractors involved in the Project implementation to maximize the employment of local poor people including APs who meet the job and efficiency requirements for construction and maintenance of the project roads. Such workers shall be provided with adequate on-the-job training. SPG shall monitor the project impact on poverty and submit annual monitoring reports to ADB during Project implementation.

Environment

10. SPG shall cause the IA to construct, maintain, and operate the Project facilities in strict conformity to (a) all applicable national and local environmental laws, regulations, and procedures of the Borrower; (b) ADB's *Environment Policy* (2002); and (c) the environmental mitigation and monitoring measures set out in the EIAs for the Project.

11. SPG shall ensure that the IA (i) allocates sufficient resources to implement the environmental monitoring plan; and (ii) provides monitoring reports to the PMO, which shall coordinate the preparation of a semi-annual environmental report on the implementation of the environmental monitoring plan in a format acceptable to ADB for the duration of the Project.

Labor Standards

12. The Borrower shall cause SPG and the IA to ensure that under the Project all the employment and labor standards provided in the applicable laws and regulations of the Borrower are complied with, and in particular, that all Works contractors engaged under the Project (i) provide timely payment of wages on at least a monthly basis and safe working conditions to all workers including male and female workers, with such requirements being included in the civil works contracts and monitored by the construction supervision consultants; (ii) provide employment opportunity to women and ethnic minorities, where appropriate, and pay equal wages to the male and female employees for equivalent works; and (iii) not employ child labor in the Project works.

Gender and Development

13. SPG shall cause the IA to (a) take necessary steps to ensure timely and effective implementation of the Project-specific participatory gender and sustainable livelihood plans; (b) carry out awareness-raising campaigns to encourage women in the Project area to participate in the planning and implementation of the Project; and (c) monitor the Project's impacts on women during Project implementation by collecting and analyzing gender-disaggregated data and information.

Land Tenure and Eco-Tourism Guidelines

14. SPG shall ensure that not later than 31 December 2010 the IA (i) completes the review of the policy and regulatory framework on collective forest land tenure; and (ii) makes recommendations to the Borrower on collective forest land tenure and management. SPG shall cause the IA to (i) develop and approve eco-tourism guidelines and standards not later than 31 December 2010; and (ii) ensure implementation of the eco-tourism guidelines.

Anticorruption

15. SPG shall, and shall cause the IA to, comply with ADB's *Anticorruption Policy* (1998, as amended to date). SPG agrees that consistent with its commitment to good governance, accountability, and transparency, ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive, or coercive practices relating to the Project. In particular, SPG shall 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 SPG, the IA, and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

16. SPG shall, and shall cause the IA to, ensure (a) engaging an international consultant and national consultant to advise and assist in the procurement of Goods and Works, and the engagement of other consultants; (b) introducing a dual signing system in which the Works contractor awarded the contract shall also sign an anticorruption contract with the employer; and (c) periodical inspection by the PMO of the contractor's activities related to withdrawals of the Loan proceeds and settlements.

PPMS

17. SPG shall ensure that the PMO establish and maintain a PPMS which shall be designed to permit adequate flexibility to adopt remedial action regarding Project design, schedules, activities and development impacts. The PPMS shall adopt the following agreed indicators: (i) Project progress; (ii) enabling framework improvements (policies legal harmonization and clear institutional mandates); (iii) results of capacity development; (iv) progress towards demonstration and pilot targets using participatory procedures; (v) beneficiary impacts; (vi) related improvement to the sustainable financing of field conservation; and (vii) compliance with ADB safeguard requirements.

Midterm Review

18. SPG and ADB shall undertake a midterm review prior to the end of the third year of the Project to assess implementation status and take appropriate measures including modification of scope and implementation arrangements, and reallocation of Loan proceeds, as appropriate, to achieve the Project's impact and outcomes.