
LOAN NUMBER 2393-PRC

PROJECT AGREEMENT

(Xinjiang Regional Road Improvement Project [Korla-Kuqa Section])

between

ASIAN DEVELOPMENT BANK

and

XINJIANG UYGUR AUTONOMOUS REGIONAL GOVERNMENT

DATED 26 MAY 2008

PAL:PRC 39655

PROJECT AGREEMENT

PROJECT AGREEMENT dated 26 May 2008 between ASIAN DEVELOPMENT BANK (hereinafter called ADB) and XINJIANG UYGUR AUTONOMOUS REGIONAL GOVERNMENT (hereinafter called XUARG).

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 one hundred fifty million Dollars (\$150,000,000) on the terms and conditions set forth in the Loan Agreement, but only on condition that the proceeds of the Loan be made available to XUARG, and that XUARG agrees to (i) make the proceeds of the Loan available to XCD who will in turn make them available to XCCAB, and (ii) undertake certain obligations towards ADB as hereinafter set forth in this Project Agreement; and

(B) XUARG, 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) XUARG shall, through XCD, carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, social safeguards, environmental, road construction, operation, and maintenance practices.

(b) In the carrying out of the Project and operation of the Project facilities, XUARG shall ensure that XCD performs all obligations set forth in the Loan Agreement to the extent that they are applicable to XUARG, XCD and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. XUARG shall, and shall cause XCD to, 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, XUARG shall ensure that XCD employs 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. XUARG shall cause XCD to carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. XUARG shall cause XCD 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) XUARG shall cause XCD 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, XUARG shall ensure that XCD insures, 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. XUARG shall ensure that XCD maintains, or causes 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 XUARG shall cooperate fully to ensure that the purposes of the Loan shall be accomplished.

(b) XUARG shall, through XCD, 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 XUARG 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, XCD and the Loan.

Section 2.08. (a) XUARG shall cause XCD to 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 XCD in relation to the Project; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, XUARG shall cause XCD to furnish to ADB quarterly 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 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, XUARG shall cause XCD 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 XCD of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) XUARG shall ensure that XCD shall (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 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 (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. XUARG shall cause XCD to 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) XUARG shall enable ADB, upon ADB's request, to discuss XCD's financial statements and its financial affairs from time to time with the auditors appointed by XCD 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 XCD unless XCD shall otherwise agree.

Section 2.10. XUARG shall cause XCD to 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 the XCD and any relevant records and documents in relation to the Project.

Section 2.11. (a) XUARG shall cause XCD, promptly as required, to take all action within its powers to maintain its administrative structure and 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) XUARG shall ensure that at all times XCD conducts its business in accordance with sound administrative, financial, social safeguards, environmental, road construction, operation, and maintenance practices, and under the supervision of competent and experienced management and personnel.

(c) XUARG shall ensure that at all times XCD operates and maintains its plants, equipment and other property, and from time to time, promptly as needed, makes all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, engineering, environmental, expressway and road, and maintenance and operational practices which are necessary in the carrying out of the Project.

Section 2.12. Except as ADB may otherwise agree, XUARG shall not and shall ensure that XCD 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, XUARG shall ensure that XCD applies 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.

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 XUARG 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

Cable Address:

ASIANBANK
MANILA

Telex Numbers:

29066 ADB PH (RCA)
42205 ADB PM (ITT)
63587 ADB PN (ETPI)

Facsimile Numbers:

(632) 636-2444
(632) 636-2426.

For XUARG

Xinjiang Communication Construction Administrative Bureau
No 1006, Yanan Road,
Urumqi
Xinjiang, PRC

Facsimile Number:

(86) 991 2574907

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

(b) XUARG shall furnish to ADB sufficient evidence of the authority of each person who shall 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 
HARUHIKO KURODA
President

XINJIANG UYGUR AUTONOMOUS
REGIONAL GOVERNMENT

By 
SONG TAO
Authorized Representative

SCHEDULE

Execution of Project; Financial Matters

Rural Transport Services

1. XCD shall ensure that (i) the implementation of the pilot policy reforms to improve rural transport services in Kuqa County, Xinjiang and the monitoring of its impacts within 2010, and (ii) successful experience of such reforms is replicated in other areas in Xinjiang subsequently.

Private Sector Participation

2. In close collaboration with ADB, XCD shall explore the possibility of attracting private sector participation in expressway financing and operations by experienced operators.

Road Maintenance

3. XUARG shall cause XCD to ensure that adequate funding is provided throughout the Project (i) for strengthening the existing road maintenance management system to cover the entire Xinjiang network including local roads, and (ii) for improvement of the winter maintenance of existing road. XCD shall take the lead in capacity development of the local governments at the county, township and village levels in road planning, development and maintenance management.

Environment

4. XUARG shall, through XCD and XCCAB, ensure that (i) the Project is designed, constructed, implemented and operated in accordance with the Borrower's national and local environmental laws and regulations and with ADB's *Environment Policy, 2002* (ii) the EIA, SEIA and the mitigation measures included therein, as specified in the EIA and the SEIA, as applicable, are properly and promptly implemented; (iii) the EMP and mitigation measures included therein are updated, at engineering design stage, and incorporated into the bidding documents and civil works contracts; (iv) any adverse impact that may arise from Project implementation activities is promptly mitigated or minimized in accordance with the EMP; (v) major incidents, including safety breaches, violation of environmental standards, and corrective measures taken in respect thereof, are reported forthwith to ADB; (vi) at least semi-annual environmental monitoring reports are submitted to ADB, and that ADB is allowed to conduct annual environmental reviews.

Good Governance and Anticorruption

5. XUARG shall ensure that all contracts financed by ADB in connection with the Project shall include provisions specifying the right of ADB to audit and examine the records and accounts of XCCAB and all contractors, suppliers, consultants, and other services providers as they relate to the Project.

6. During the Project implementation, XUARG shall, through XCD and XCCAB, ensure compliance with ADB's *Anticorruption Policy* (1998, as amended to date). XUARG shall, through XCD and XCCAB, ensure that (i) officials from the Discipline and Inspection Bureau of XUARG monitor bidding of contracts and construction and operations of Project facilities; (ii) an internal audit unit is established in XCD; (iii) a dual-signing system is adopted where the winner of the civil works contract also signs an anticorruption contract with the employer; (iv) periodic inspections on the contractors' activities are undertaken to ensure that fund withdrawals and settlements procedures are followed; and (v) the status of procurement and awards of contracts is published on XCD's website in accordance with ADB's *Procurement Guidelines*.

Land Acquisition and Resettlement

7. XUARG shall, through XCD, ensure and cause XCCAB, to ensure that (i) the full resettlement plan (RP) for the project expressway and the short RP for the local roads are implemented promptly and efficiently in accordance with their terms; and with all applicable Borrower's laws and regulations, and ADB's *Involuntary Resettlement Policy* (1995); (ii) prior to the commencement of civil works, all land and rights-of-way required by the Project shall be made available in a timely manner, including land use approvals and agreements with APs; (iii) compensation and resettlement assistance shall be given to the APs prior to their dispossession and displacement, and commencement of civil works, (iv) all the APs are given adequate opportunity to participate in resettlement planning and implementation; and (v) the APs are at least as well off as they would have been in the absence of the Project. XUARG shall (i) timely provide counterpart funds for land acquisition and resettlement activities and (ii) promptly meet any obligations in excess of the RP budget estimates.

8. XUARG shall, through XCD, ensure and cause XCCAB to ensure that (i) both RPs are updated upon the completion of the detailed design and detailed measurement survey and submitted to ADB for approval prior to commencement of civil works; (ii) any material changes in the Project scope are reflected in the RPs; (iii) updated RPs are disclosed to the APs; (iv) civil works contractor specifications in contracts include requirements to comply with the RPs and entitlements for permanent and temporary impacts to the APs; (v) the contractors are supervised to ensure compliance with requirements of the RPs, the Borrower's applicable laws and regulations, and ADB's *Involuntary Resettlement Policy*; and (vi) contractors are required to give preference to the APs, specifically women, for employment during construction, and this requirement is specifically monitored and reported to ADB.

9. XUARG shall, through XCD, ensure and cause XCCAB to ensure that (i) adequate staff and resources are committed to supervising and monitoring the implementation of the RPs, and providing to ADB quarterly reports on implementation and a resettlement completion report; (ii) an independent national external monitor acceptable to ADB is engaged by XCCAB to carry out investigations to monitor progress semi-annually and to evaluate RPs' implementation results through annual survey updates for two years after completion of resettlement, and forward semi-annual reports to ADB and XUARG simultaneously; (iii) data is disaggregated by gender, and monitoring includes impacts on women and vulnerable groups; and (iv) a summary of the final government audit of resettlement, disbursements and expenditures is provided to ADB.

Gender and Development

10. XUARG shall, through XCD, ensure and cause XCCAB to follow ADB's *Policy on Gender and Development* (1998) during Project implementation and take necessary steps to encourage women living in the Project area to participate in planning and implementing the Project, including causing the contractors to maximize the employment of women who can meet the job and efficiency requirements for construction and maintenance of the Project roads. XUARG shall, through XCD and XCCAB, monitor the effects of the Project on women during project implementation.

Ethnic Minority Development

11. XUARG shall, through XCD, ensure and cause XCCAB to ensure that (i) the two EMDPs are implemented in accordance with their terms and ADB's *Policy on Indigenous Peoples* (1998); (ii) EMDPs are disclosed to the APs; (iii) ethnic minorities in the Project areas are consulted and provided with an opportunity to participate in the implementation of the EMDPs; (iv) sufficient budget for implementation and monitoring of each EMDP is made available in a timely manner; (v) any significant changes to the EMDPs are submitted to ADB for approval; (vi) an external independent monitoring organization acceptable to ADB is engaged to regularly monitor and evaluate the implementation and results of these actions every year, and submit reports to XCD and ADB annually until the completion of the Project; (vii) data are disaggregated by gender, and monitoring includes gender impacts and vulnerable groups; and (viii) the targeted ethnic minorities benefit from the Project and are at least as well off as they would have been in the absence of the Project.

Poverty Reduction

12. XUARG shall, through XCD, ensure and cause XCCAB to ensure that the contractors involved in the Project implementation shall maximize the employment of local poor people, including ethnic minorities, who can 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.

Labor Standards

13. XUARG shall, through XCD, ensure and cause XCCAB to ensure that all employment and labor standards provided in the Borrower's applicable laws and regulations are complied with, and in particular, that all civil 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 male and female employees for equivalent works; and (iii) do not employ child labor in the Project works.

Health Risks

14. XUARG shall, through XCD, cause XCCAB, in coordination with the Xinjiang Health Department and its local agencies, to disseminate information on the risks of socially and sexually transmitted diseases, including HIV/AIDS, to their employees, subcontractors and families during Project implementation. XUARG shall, through XCD, cause XCCAB and 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. XUARG shall, through XCD and XCCAB cause contractors to (i) ensure their workers have regular health checks; and (ii) monitor health risk control according to the Implementation Methods of Epidemic Prevention Law of the Borrower (1991) and in accordance with the methods specified in the EMDPs.

Capacity Development

15. XCD shall prepare a capacity development plan for Component 6. Before undertaking international training, XCD shall prepare for ADB's concurrence a detailed training plan that shall include (i) the objective of the training activities; (ii) a detailed schedule; (iii) the number of training participants, (iv) duration of each training program; (v) cost estimates; and (vi) the expected skills to be acquired or developed by the participants. On completion of each international training, XCD shall submit to ADB an evaluation of the training.

Construction Quality

16. XUARG shall, through XCD, ensure that (i) the Project expressway and local roads are constructed in accordance with the MOC's technical standards; and (ii) the Project construction supervision, quality control, and contract management are conducted in accordance with national standards and internationally accepted practices.

Road Safety

17. Prior to construction and operation of expressway and local roads, XUARG shall cause XCD to ensure that independent road safety audits are carried out and recommendations of these audits are taken into account during Project construction and operations. XUARG shall cause XCD to ensure that safe road facilities with adequate signage, communication, traffic monitoring, and traffic management scheme are provided. At least six (6) months prior to the opening of the expressway, XCD and Xinjiang Public Security Department shall develop and implement a plan to ensure safe operation of road infrastructure facilities.

Toll Rates

18. At least six (6) months prior to the opening of the expressway, XUARG shall, through XCD, propose to ADB the appropriate toll rates for the expressway in accordance with the Highway Law (which requires that at a minimum the toll rates be set at levels sufficient to fulfill the debt service obligations of the Project as well as maintain sound operation, management, and maintenance practices for the Project). The proposed toll rates and any subsequent changes shall be reported to ADB for information.

PPMS

19. XUARG shall, through XCD and XCCAB, ensure that the PPMS acceptable to ADB is established within six (6) months of Effective Date.

Monitoring and Evaluation

20. XUARG shall, through XCD, ensure and cause XCCAB to monitor and evaluate impact of the Project, through the PPMS to ensure that the Project facilities are managed effectively and the benefits, particularly to the poor, are maximized. XCCAB shall (i) recruit qualified international and national consultants to carry out the monitoring activities; (ii) collect the data to measure the indicators contained in the PPMS prior to, and during, implementation of the Project, at completion of the Project, and for three (3) years thereafter; and (iii) submit to ADB the reports summarizing the key findings of monitoring and evaluation.

Project Review

21. ADB, jointly with XCD and XCCAB shall carry out annual reviews and mid term review of the Project after two (2) years the Effective Date, covering all aspects that may have an impact on the performance of the Project, including compliance with the terms of the Loan Agreement and the Project Agreement.