

PROJECT AGREEMENT

(Inner Mongolia Autonomous Region Environment Improvement Project)

between

ASIAN DEVELOPMENT BANK

and

GOVERNMENT OF INNER MONGOLIA AUTONOMOUS REGION

DATED 16 MAY 2007

## **PROJECT AGREEMENT**

This PROJECT AGREEMENT dated 16 May 2007 between ASIAN DEVELOPMENT BANK (hereinafter called ADB) and the Government of Inner Mongolia Autonomous Region (hereinafter called GIMAR).

### **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 twenty million Dollars (\$120,000,000) 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 GIMAR, and through GIMAR, the Municipal Governments and/or County Governments onlent to the Project Implementing Agencies for the purposes of the Components and subcomponents of the Project described in Schedule 1 to the Loan Agreement; and

(B) GIMAR, 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, except that for purposes of this Project Agreement, when applied to a PIA, the term "Project" means the Components or subcomponents under such PIA's implementation.

## **ARTICLE II**

### **PARTICULAR COVENANTS**

Section 2.01. (a) GIMAR shall, and shall cause the PIAs to, carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental and, where applicable, heating supply, gas transmission and distribution, and wastewater treatment practices.

(b) In the carrying out of the Project and operation of the Project facilities, GIMAR shall, and shall cause the PIAs to, perform all obligations set forth in the Loan Agreement

to the extent that they are applicable to GIMAR and the PIAs and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. GIMAR shall, and shall cause the PIAs 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, GIMAR shall, and shall cause the PIAs 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. GIMAR shall, and shall cause the PIAs to, carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. GIMAR 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) GIMAR shall, and shall cause the PIAs 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, GIMAR undertakes, and shall cause the PIAs to, insure, or cause to be insured, the Goods to be imported for the Project and to be financed and shall cause the PIAs to undertake 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. GIMAR shall maintain, or cause the concerned PIA to maintain, 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 GIMAR shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) GIMAR 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 any of the Onlending Agreements, or the accomplishment of the purposes of the Loan.

(c) ADB and GIMAR shall, and GIMAR shall enable ADB and the PIAs to, from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Project, GIMAR, any concerned PIA and the Loan.

Section 2.08. (a) GIMAR shall, and shall cause the PIAs 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 GIMAR and the concerned PIA; and (v) any other matters relating to the purposes of the Loan.

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

Section 2.09. (a) GIMAR shall maintain separate accounts for the Project and shall cause the PIAs to maintain separate accounts for their respective Components or subcomponents. GIMAR shall, and shall cause the PIAs to, (i) 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 external auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (ii) furnish to ADB, promptly after their preparation but in any event not later than 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 and statement of expenditures), all in the English language. GIMAR shall, and shall cause the PIAs 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) GIMAR shall enable ADB, upon ADB's request, to discuss the financial statements maintained by GIMAR for the Project and any PIA's financial statements and their respective financial affairs from time to time with GIMAR's and PIAs' auditors, 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 GIMAR or the concerned PIA, unless GIMAR or the concerned PIA shall otherwise agree.

Section 2.10. GIMAR 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 the PIAs to the extent applicable to the Project, and any relevant records and documents.

Section 2.11. (a) GIMAR shall cause each PIA to, 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) GIMAR shall ensure that each PIA at all times conducts its business in accordance with sound administrative, financial, environmental, heating supply, gas transmission and distribution, and wastewater treatment practices, and under the supervision of competent and experienced management and personnel.

(c) GIMAR shall ensure that each PIA at all times operates and maintains 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, heating supply, gas transmission and distribution, wastewater treatment, maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, GIMAR shall not, and shall ensure that nor does PIA, 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, GIMAR shall, and shall ensure that each PIA, 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, GIMAR shall duly perform all its obligations under the Subsidiary Loan Agreement and the Onlending Agreements, 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. GIMAR shall, and shall cause the concerned PIA to, promptly notify ADB of any proposal to amend, suspend or repeal any provision of the PIA's 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 GIMAR 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 GIMAR

Inner Mongolia Autonomous Region Finance Bureau  
No. 1, Xinhua Street, Huhhot City, Inner Mongolia  
People's Republic of China  
Post Code: 010055

Facsimile Number:

(86-471) 694-4502

With a copy to:

Inner Mongolia Autonomous Region Environment Improvement  
Project Management Office  
Room 301, Zonghe Building, Inner Mongolia Party School  
No. 45, Wulanchabu Road, Hohhot City, Inner Mongolia  
People's Republic of China  
Post Code: 010010

Facsimile Number:

(86-471) 226-7432.


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 GIMAR 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) GIMAR 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.

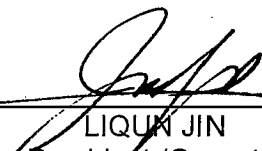
Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action 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.

GOVERNMENT OF INNER MONGOLIA  
AUTONOMOUS REGION

By   
H.E. MR. LI JINJUN  
Authorized Representative

ASIAN DEVELOPMENT BANK

By   
LIQUN JIN  
Vice President (Operations 1)



## SCHEDULE

### EXECUTION OF PROJECT

#### Counterpart Funding

1. GIMAR shall ensure that all financing (other than from the Loan proceeds) including cash injection and equity contributions 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 or inadequacy of funding of, or delay in financing by, or change of control within, any of the PIAs, GIMAR shall promptly inform the Borrower and ADB and provide additional funds as may be necessary for successful implementation of the Project.

#### Change in Ownership and Operation

2. In the event (a) of any change in ownership of the Project facilities or (b) any sale, transfer or assignment of shares or interest or other change of control in any PIA is anticipated, GIMAR shall, and cause the concerned PIA to, consult with ADB at least six months prior to the implementation of such change. GIMAR shall, and shall cause the concerned PIA to, ensure that such change be carried out in a lawful and transparent matter.

#### Closure of Small Coal-fired Heating Boilers

3. GIMAR shall ensure that the PIAs complete the closure of 396 small coal-fired heat boilers identified for closure under the Project by 31 December 2009. The demolishing of boilers shall be carried out in accordance with all applicable PRC environmental and safety standards. In accordance with ADB's Social Protection Strategy, GIMAR shall cause the PIAs to ensure that all workers affected by the closure of the small coal-fired heat boilers under the Project are reemployed in a timely manner and in accordance with the reemployment action plan so that they will be at least as well off as they would have been in the absence of the Project.

#### Construction Quality

4. GIMAR shall ensure that the technical specifications of the design of the Project facilities, and construction supervision, quality control and contract management are performed in accordance with national standards and internationally acceptable practices.

#### Implementation of Heating Tariff Reforms

5. GIMAR shall cause the PIAs to progressively implement at the city level key heating tariff reforms including: (a) installation of lock valves in individual apartment units in buildings to improve tariff collection; (b) installation of radiator control valves in apartment units in buildings to encourage heat conservation; (c) implementation of two-part heating tariff structure that the variable charge shall be based on heat consumption; the overall heating tariff level should be cost-reflective and promote economic efficiency; (d) installation of heat measuring devices at apartment level to support consumption-based billing systems; and (e) conversion from enterprise-based tariff payment system to individual-based payment system.

### Heating Assistance to the Poor

6. GIMAR shall ensure that the PIAs implement the pro-poor programs that provide heating tariff discounts to the poor based on the cost savings from efficiency improvement under the Project. GIMAR shall ensure that the government-funded heating assistance programs to assist the poor and those with incomes marginally higher than the poverty level to pay heating bills are established in the Project area.

### Financial Performance of the PIAs

7. In each fiscal year commencing from fiscal year 2007, GIMAR shall ensure that PIAs maintain a debt-service coverage ratio of at least 1.4 times; and a current ratio of greater than 1:1 by 2010 and thereafter, and a debt-equity ratio of not greater than 70:30.

### Institutional Strengthening

8. GIMAR shall ensure that the PIAs implement, in accordance with the implementation plan agreed upon between the GIMAR and ADB, the agreed upon recommendations for financial and institutional strengthening made by the consultants under Component D of the Project, in particular with regard to improving cost accounting and financial management and reporting, corporate governance, budgeting, management administration, and staff incentive schemes.

### Environment

9. GIMAR shall ensure that the PIAs implement the Project in accordance with national and local government environmental laws, regulations, procedures, guidelines, the ADB *Environment Policy*, 2002, and the EIA. The GIMAR shall, and shall cause the PIAs to, ensure that any adverse environmental impacts from the construction and operation of the Project will be minimized, by implementing the mitigation measures in the EMP and environmental monitoring plan. Environmental monitoring reports shall be submitted to ADB twice annually during construction and annually for 2 years during the operational period. The EMP (mitigation measures, monitoring plan and institutional arrangement) shall be updated during the engineering design stage, and will be incorporated in the bidding documents and civil works contracts.

### Land Acquisition and Resettlement

10. GIMAR shall through the Municipal Governments and County Governments cause PIAs to, (a) implement the RP in accordance with its terms, (b) ensure that all land and rights-of-way required by the Project are made available in a timely manner, (c) ensure that the provisions of the RP, including compensation and entitlements for affected persons (AP), will be implemented in accordance with all applicable Borrower's laws and regulations, and ADB's *Policy on Involuntary Resettlement*, 1995, (d) ensure all affected people are provided adequate information and regularly consulted in advance of signing household compensation agreements, (e) ensure timely provision of counterpart funds for land acquisition and resettlement activities, (f) meet any obligations in excess of the RP budget estimate, (g) ensure that the AP will be at least as well off as they would have been in the absence of the Project, and (h) ensure that the RP will be updated on completion of the detailed measurement survey and submitted to ADB for review and approval. GIMAR shall ensure that PIAs notify ADB in advance of any significant changes, update the RP as necessary, and submit to ADB such updated RPs. GIMAR shall

cause the PIAs to ensure that civil works contractors' specifications include requirements to comply with the RP and entitlements for permanent and temporary impacts to the AP, and will supervise the Project contractors to ensure compliance with requirements of RP, applicable law and ADB's *Policy on Involuntary Resettlement*, 1995. GIMAR shall, and shall cause the PIAs to, keep ADB informed of the progress of implementation of the RP through the quarterly progress reports and through two reports on achievement of resettlement objectives to be submitted immediately upon completion of the resettlement plan and one year thereafter. GIMAR shall engage an independent domestic agency to (a) monitor the implementation of the RP including the extent to which adverse social impacts have been compensated for, (b) provide inputs for the quarterly progress reports on the implementation of the RP, and (c) prepare an evaluation report of the resettlement one year after completion. GIMAR shall, and shall cause the PIAs to, ensure that the payment of compensation and all resettlement assistance prior to APs being dispossessed of their assets and external monitoring reports will be submitted to ADB.

### Gender and Development

11. GIMAR shall ensure that the PIAs follow the principles of the ADB's *Policy on Gender and Development*, 1998, during implementation of the Project, including taking all necessary actions to encourage women living in the Project area to participate in planning and implementing Project activities. GIMAR, 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 area, which are included in the Social Development Action Plan.

### Health and Social Risks

12. GIMAR shall ensure that the PIAs, together with the appropriate government authorities, require contractors employed under the Project to disseminate information (in local languages) on the risks of sexually-transmitted infections, including HIV/AIDS, in health and safety programs to those employed during Project implementation. Specific provisions to this effect shall be included in bidding documents and civil works contracts, and compliance shall be strictly monitored by the GIMAR and the PIAs.

### Gas, Heating and Water Supply Agreements

13. GIMAR shall cause the PIAs to sign and execute long-term gas, heating and water supply agreements with large prospective customers to ensure the demand of the gas and heating services.

### Labor and Employment

14. GIMAR shall, and shall cause the PIAs 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 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.

### Anticorruption measures

15. GIMAR shall, and shall cause the PIAs to: (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*, 1998, 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 in ADB's 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 the PIAs and all contractors, suppliers, consultants and other service providers as they relate to the Project. GIMAR shall also (i) involve full-time officials from the Finance Bureau of IMAR in the supervision of bidding, construction, and operations; and (ii) carry out periodic inspections of the contractors' activities related to fund withdrawals and settlements.

### Monitoring and Evaluation

16. GIMAR shall monitor and evaluate Project impacts, with assistance of the consultants engaged under the Project, as specified in the project performance management system (PPMS) developed for the Project and agreed to by GIMAR, to ensure that the Project facilities are managed effectively and the benefits, particularly to the poor, are maximized. GIMAR shall (i) engage consultants for monitoring and evaluation by December 2006, (ii) facilitate the data collection from local governments, including local statistics offices, to measure the indicators in the PPMS during Project implementation, at completion, and biennially, for 5 years thereafter, with the frequency as specified in the PPMS; and (iii) submit to ADB the reports summarizing the key findings.

### Project Midterm Review

17. A midterm review of the Project shall be undertaken two years after the Effective Date. 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 examine progress in sector reforms, evaluate development, resettlement, environment, poverty impact, and compliance with assurances in this Project Agreement. The review shall also undertake a comprehensive review of potential Loan savings, identify areas for reallocation of Loan proceeds, and change disbursement percentages, as appropriate.