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LOAN NUMBER 2526-PRC

PROJECT AGREEMENT

(Xinjiang Urban Transport and Environmental Improvement Project)

between

ASIAN DEVELOPMENT BANK

and

XINJIANG UYGUR AUTONOMOUS REGION GOVERNMENT

DATED 26 AUGUST 2009

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PAL: PRC 40643

## **PROJECT AGREEMENT**

PROJECT AGREEMENT dated 26 August 2009 between ASIAN DEVELOPMENT BANK (hereinafter called ADB) and XINJIANG UYGUR AUTONOMOUS REGION 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 million dollars (\$100,000,000) 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 XUARG, and through XUARG to the IAs of the Project, and that XUARG agrees to, and cause the IAs to undertake certain obligations towards ADB as hereinafter set forth; 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. (a) 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, the term "the Project", when applied to a Subproject or a number of Subprojects, means any of the Subproject or Subprojects, as described in Schedule 1 to the Loan Agreement.

(b) In addition, the expression of "IA(s) shall", wherever used in this Project Agreement, unless the context otherwise requires, means XUARG shall cause IAs(s) to perform the required obligations.

## ARTICLE II

### Particular Covenants

Section 2.01. (a) XUARG shall cause the IAs to perform the obligations and perform the undertakings as required in this Project Agreement.

(b) XUARG shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, environmental, and urban transport practices.

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

Section 2.02. XUARG and each IA 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, the IAs shall employ competent and qualified consultants and contractors, acceptable to ADB, to an extent and upon terms and conditions acceptable 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 acceptable to ADB.

Section 2.04. Each IA shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods as agreed between ADB and XUARG. Each IA 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) Each IA shall make insurance arrangements in accordance with the relevant regulations of the Borrower and acceptable to ADB for insurance of the Project facility 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, each IA 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. Each IA 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 XUARG shall cooperate fully to ensure that the purposes of the Loan be accomplished.

(b) XUARG 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 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 and the Loan.

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

(b) Without limiting the generality of the foregoing, XUARG 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 (6) months under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following six (6) months.

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

Section 2.09. (a) XUARG shall, to the extent relevant to the Project, and shall ensure that each IA (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 (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 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) Each IA shall enable ADB, upon ADB's request, to discuss financial statements of the Project and the related financial affairs from time to time with the auditors appointed by XUARG 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 XUARG unless XUARG shall otherwise agree.

Section 2.10. XUARG and each IA 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 IA and any relevant records and documents.

Section 2.11. (a) Each IA shall at all times conduct its business in accordance with sound administrative, financial, environmental, and urban transport and environmental improvement practices, and under the supervision of competent and experienced management and personnel.

(b) Each IA 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, maintenance and operational practices, and urban transport practices

Section 2.12. Except as ADB may otherwise agree, no IA shall sell, lease or otherwise dispose of any of their 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 during Project implementation.

Section 2.13. Except as ADB may otherwise agree, each IA 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.

### **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  
Facsimile Numbers:

(632) 636-2444  
(632) 636-2407

#### For XUARG

Xinjiang Uygur Autonomous Region Government  
#2 Zhongshanlu, Tianshan District  
Urumqi  
Xinjiang Uygur Autonomous Region  
P.O. Box 830041

Facsimile Number:

(8610) 281-7567.

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 Chairperson or by such other person or persons as the Chairperson shall so designate in writing notified to ADB.

(b) XUARG 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   
HARUHIKO KURODA  
President

XINJIANG UYGUR AUTONOMOUS  
REGION GOVERNMENT

By   
JIANCHAO LIU  
Authorized Representative

## **SCHEDULE**

### **Execution of Project; Financial Matters**

#### Implementation Arrangements

1. XUARG shall be the EA for the Project. The PLG, which has been established and led by a Vice Chairperson of XUARG, shall provide overall guidance and support to the preparation and implementation of the Project and to liaise with ADB.
2. The PMO, which has been established under the PLG, chaired by the director of the Xinjiang Construction Bureau and including, as its members, the officials from the Xinjiang Construction Bureau, Xinjiang Finance Bureau, and Xinjiang Development and Reform Commission shall undertake day-to-day activities, including interdepartmental coordination and liaison with the consulting team and ADB on matters relating to the preparation and implementation of the Project.
3. The five city governments listed below shall be the IAs, specifically responsible for implementation of the respective Subprojects in their cities, including construction and O&M of the Project facilities:
  - (i) Altay City Government through its Construction Bureau for the Altay Subproject;
  - (ii) Changji City Government through its Construction Bureau for the Changji Subproject;
  - (iii) Hami City Government through its Construction Bureau for the Hami Subproject;
  - (iv) Kuitun City Government through its Construction Bureau for the Kuitun Subproject; and
  - (v) Turpan City Government through its Construction Bureau for the Turpan Subproject.

#### Construction Quality

4. Each IAs shall ensure that all the works of the Project are designed and constructed in accordance with national standards and specifications, and that the construction supervision, quality control, contract management, and completion inspection and acceptance follow applicable national laws and regulations.

#### Capacity Building Activities

5. XUARG shall cause the IAs to, with the assistance of the loan implementation consultant, prepare and submit training plans to be implemented under the Project for ADB's concurrence, and ensure that training institutes for such purpose be selected in accordance with procedures acceptable to ADB. Following each training event, the concerned IA will submit a training completion report to the PMO for consolidation and transmission to ADB.



### Counterpart Financing

6. Each IA shall ensure that (a) all local and foreign currency counterpart financing necessary for the Project be provided in time as required to enable completion of Project activities, and prompt debt repayment after Project completion; (b) additional counterpart funding be provided for any shortfall of funds or cost overruns; and (c) in each fiscal year adequate funds be allocated for O&M of the Project facilities to ensure that such facilities be operated and maintained in good condition.

### Financial Management System

7. Each IA shall establish and maintain a sound financial management system in accordance with ADB's *Guidelines for Governance and Financial Management of an ADB Investment Project*, including the establishment of separate bank accounts and the maintenance of minimum balances to ensure smooth cash flow and the timely settlement of project construction liabilities and future debt servicing. The financial management system shall comprise (a) financial planning, budgeting, and budgetary control; (b) accounting consistent with applicable standards of the Borrower; (c) internal control; (d) data processing; and (e) financial reports.

### Social and Employment Standards

8. Each IA shall ensure that contractors engaged under the Project comply with all applicable labor laws of the Borrower. These requirements shall be tracked by the PPMS and external monitoring reports for RP and EMDP implementation.

9. Each IA shall ensure that (a) contractors engaged under the Project not employ child labor; and (b) provisions be stipulated in all works contracts of the Project to require contractors to incorporate occupational safety norms, disseminate information and training on prevention of HIV/AIDS and Sexually Transmitted Diseases , and (c) observe protocols concerning acceptable behaviour toward the local population.

10. Each IA shall set employment targets for the poor and ethnic minorities who meet the job requirements for all construction and maintenance activities and ensure that the contractors provide the workers with adequate on-the-job training, use local unskilled labor and not differentiate wages based on gender, and monitor the project impact on poverty in accordance with guidelines set forth in the PPMS.

### Gender Development

11. Each IA shall take all reasonable and necessary steps to encourage women living in the Project areas to participate in the design, planning, implementation, and evaluation of the Project, including causing the contractors to maximize employment of women in connection with the Project; and monitor the Project's impacts on women during project implementation and report them in the PPMS.

12. Each IA shall ensure that staff and resources be made available for monitoring women's involvement in the Project planning, implementation, and evaluation, public awareness and education program, and on health, safety, and labor issues.

### Public Awareness Program

13. Each IA shall conduct of public awareness and education programs, pre-, during, and post-project implementation, targeting at all stakeholders in the Project areas in the languages of the local ethnic minority groups, on health, hygiene, managing solid waste disposal and wastewater, environmental improvement, and the developmental objectives of the Project.

### Land Acquisition and Resettlement

14. Each IA shall, where the Project necessitates land acquisition and resettlement, ensure that (a) prior to the commencement of construction works, all land and rights-of-way required by the Project be made available in a timely manner in accordance with the Borrower's relevant laws and regulations, including land use approvals and agreements with APs; (b) the RPs be implemented promptly and efficiently in accordance with their terms, and the provisions of the RPs be implemented in accordance with all applicable laws and regulations of the Borrower, and ADB's *Involuntary Resettlement Policy* (1995); (c) all APs be given adequate opportunity to participate in resettlement planning and implementation, and they be at least as well off as they would have been in the absence of the Project; (d) counterpart funds be provided in time for land acquisition and resettlement activities; and (e) any amounts in excess of the RP budget estimates be provided.

15. Each IA shall ensure that each RP be updated according to the final design, including detailed measurement surveys for the respective subcomponents of the Project, and the updated RPs be submitted to ADB for its concurrence prior to award of civil works contracts and disclosed to APs in accordance with ADB's applicable information disclosure requirements for resettlement.

16. Each IA shall ensure that (a) adequate staff and resources be committed to supervising and internally monitoring the implementation of each RP and provide ADB with semi-annual monitoring reports during resettlement implementation, and a resettlement completion report for each subcomponent; (b) an independent agency acceptable to ADB be contracted to carry out monitoring and evaluation, including data disaggregated by gender where applicable, and forward reports to ADB semi-annually; (c) ADB be promptly advised of any substantial changes in the resettlement impacts and, if necessary, a revised RP be submitted to ADB for its approval; (d) construction contract specifications include requirements to comply with the RPs and ensure prompt payment and delivery of entitlements to compensate APs for any permanent and temporary project impacts to APs; and (e) the construction and demolition contractors be supervised to ensure compliance with requirements of the RPs, applicable laws of the Borrower, and ADB's *Involuntary Resettlement Policy*.

### Ethnic Minority Development Plan

17. Each IA shall ensure that (a) the action plan developed for the EMDP be implemented in accordance with its terms and the outcomes made available for public comment; (b) benefits target ethnic minorities in the project areas in accordance with ADB's *Policy on Indigenous Peoples* (1998); (c) works contract specifications include requirements to comply with the EMDP and as a priority provide employment to ethnic minorities; and (d) adequate staff and resources be committed to supervision and monitoring of the

implementation of the EMDP and progress, if any, be reported to ADB on a semi-annual basis.

### Environment

18. Each IA shall construct, operate, maintain, and monitor the Project facilities in strict conformity with (a) all applicable national and provincial environmental laws and regulations, ADB's *Environment Policy* (2002), and other national, Xinjiang, and local laws and regulations and standards on environmental protection, health, labor, and occupational safety, and (b) all environmental mitigation and monitoring measures detailed in the design and construction contracts, the operational guidelines, and the approved EIAs, SEIA, and EMP for the Project.

19. Each IA shall ensure that an adequate number of full-time personnel and sufficient resources be provided to monitor the implementation of the environmental monitoring program, under the guidance of XEPB, Altay, Changji, Hami, Kuitun, and Turpan environmental protection bureaus or other environmental monitoring centers.

20. Each IA shall ensure that XEPB and PMO review any changes to the project design that may have a potential for causing negative environmental impacts, so that environmental monitoring and mitigation measures may be adjusted accordingly in consultation with ADB.

21. Each IA shall build, where applicable, the associated solid waste, wastewater treatment, and underground facilities in parallel with the proposed road components and complete the connections and maintain such facilities in good condition.

22. Each IA shall take necessary actions to minimize the impact of water supply, wastewater collection, and other utility services during the construction of the roads and associated facilities constructed under the Project.

23. Each IA shall submit regular monitoring reports to the PMO, who shall prepare and submit to ADB semi-annual environmental reports in a format acceptable to ADB, until loan closure.

### Corporate Governance and Anticorruption

24. XUARG and each IA shall undertake the following anticorruption actions:

- (i) involve the agencies responsible for oversight of each IA in bidding and construction to enhance construction quality control and supervise effective work;
- (ii) introduce a dual-signing system in which the civil works contract winner also signs an anticorruption contract with the employer;
- (iii) periodically inspect the contractor's activities related to fund withdrawals and settlements; and

- (iv) engage a project management consultant to support the Xinjiang and the IAs to ensure good governance, accountability, and transparency in project operations.

25. XUARG shall ensure that project audits be undertaken by external auditors acceptable to ADB, and prompt actions shall be taken to comply with any of the audit observations.