
LOAN NUMBER 3506-PRC

PROGRAM AGREEMENT

(Public-Private Partnerships Demonstration Program to Transform Delivery of Elderly Care
Services in Yichang, Hubei – Results-Based Lending)

between

ASIAN DEVELOPMENT BANK

and

HUBEI PROVINCIAL GOVERNMENT

YICHANG MUNICIPAL GOVERNMENT

DATED March 11 2018

PRC 50201

PROGRAM AGREEMENT

PROGRAM AGREEMENT dated *March 11 2018* between ASIAN DEVELOPMENT BANK ("ADB") and HUBEI PROVINCIAL GOVERNMENT ("HPG") and YICHANG MUNICIPAL GOVERNMENT ("YMG").

WHEREAS

(A) by a Loan Agreement of even date herewith between the People's Republic of China ("Borrower") and ADB, ADB has agreed to make to the Borrower a loan of fifty million Dollars (\$50,000,000) 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 Yichang Municipal Government ("YMG") through Hubei Provincial Government ("HPG") and that HPG and YMG agree to undertake certain obligations towards ADB set forth herein; and

(B) HPG and YMG, in consideration of ADB entering into the Loan Agreement with the Borrower, have agreed to undertake the obligations set forth herein;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01. Wherever used in this Program Agreement, unless the context otherwise requires, the several terms defined in the Loan Agreement and in the Loan Regulations (as so defined) have the respective meanings therein set forth.

ARTICLE II

Particular Covenants

Section 2.01. (a) HPG and YMG shall carry out the Program with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

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

Section 2.02. HPG and YMG shall make available, promptly as needed, and on terms and conditions acceptable to ADB, the funds, facilities, services, and other resources as required, in addition to the proceeds of the Loan, for the carrying out of the Program.

Section 2.03. HPG and YMG shall closely monitor the actions specified in the PAP and the PID to ensure that those actions are implemented in a timely and efficient manner.

Section 2.04. (a) ADB, HPG and YMG shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) HPG and YMG shall promptly inform ADB of any condition which interferes with, or threatens to interfere with, the progress of the Program, the performance of its obligations under this Program Agreement, or the accomplishment of the purposes of the Loan.

(c) ADB, HPG and YMG shall from time to time, at the request of either party, exchange views through their representatives with regard to any matters relating to the Program, YMG and the Loan.

Section 2.05. (a) YMG shall (i) maintain separate accounts and records for the Program; (ii) prepare unaudited annual financial statements for the Program in accordance with accounting principles acceptable to ADB for FY2018 and for each FY until the Loan Closing Date, and furnish these to ADB no later than 6 months after the close of each FY; (iii) prepare annual financial statements for the Loan in accordance with accounting principles acceptable to ADB for FY2018 and for each FY until the Loan Closing Date, and furnish these to ADB no later than 6 months after the close of each FY; (iv) have the financial statements for the Loan audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with international standards for auditing or the national equivalent acceptable to ADB; (v) as part of each such audit, have the auditors prepare a report (which includes the auditors' opinion on the financial statements, use of the Loan proceeds and compliance with the financial covenants of the Loan Agreement) and a management letter (which sets out the deficiencies in the internal control of the program that were identified in the course of the audit, if any); and (vi) furnish to ADB, no later than 6 months after the close of the FY to which they relate, copies of such audited financial statements, audit report and management letter, all in the English language, and such other information concerning these documents and the audit thereof as ADB shall from time to time reasonably request.

(b) ADB shall disclose the annual audited financial statements for the Program and the opinion of the auditors on the financial statements within 14 days of the date of ADB's confirmation of their acceptability by posting them on ADB's website. The management letter shall not be disclosed.

(c) YMG shall enable ADB, upon ADB's request, to discuss the financial statements for the Loan, and YMG and their financial affairs where they relate to the Loan with the auditors appointed pursuant to subsection (a)(iv) hereinabove, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB. This is provided that such discussions shall be conducted only in the presence of an authorized officer of YMG, unless YMG shall otherwise agree.

Section 2.06. As part of the reports and information referred to in Section 7.04 of the Loan Regulations, YMG shall furnish, or cause to be furnished, to ADB: (a) semiannual reports on the implementation of the Program, including the accomplishment of the DLIs, the carrying out of the Program Actions and the Eligible Expenditures; and (b) as ADB shall reasonably request, additional information in connection with the reports described in subsection (a) hereinabove and other information on Program implementation.

Section 2.07. The Borrower shall enable ADB's representatives to inspect the Program and any relevant records and documents.

Section 2.08. (a) YMG shall, promptly as required, take all action within its powers to maintain its statutory 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 Program or in the conduct of its operations.

(b) YMG shall at all times conduct its operations in accordance with sound applicable technical, financial, business, development and operational practices, and under the supervision of competent and experienced management and personnel.

ARTICLE III

Effective Date; Termination

Section 3.01. This Program Agreement shall come into force and effect on the date on which the Loan Agreement comes into force and effect. ADB shall promptly notify HPG and YMG of such date.

Section 3.02. (a) This Program Agreement and all obligations of the parties hereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms.

(b) If the Loan Agreement terminates in accordance with its terms before the date specified in subsection (a) hereinabove, ADB shall promptly notify HPG and YMG of this event.

Section 3.03. All the provisions of this Program 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 Program Agreement and any agreement between the parties contemplated by this Program 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, mail or facsimile 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
 6 ADB Avenue
 Mandaluyong City
 1550 Metro Manila
 Philippines

Facsimile Numbers:

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

For HPG

Hubei Provincial Department of Finance
 No. 8 Zhongbei Road
 Wuhan 430071, Hubei Province
 People's Republic of China

Facsimile Number:

(86-27) 67818629

For YMG

Yichang Municipal Finance Bureau
 No. 7 Fazhan Avenue
 Yichang City 443005, Hubei Province
 People's Republic of China

Facsimile Number:

(86-717) 6330391.

Section 4.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Program Agreement by or on behalf of HPG and YMG may be taken or executed by the Governor of HPG and Mayor of YMG, respectively, or by such other person or persons as the Governor of HPG and the Mayor of YMG, respectively, shall so designate in writing notified to ADB.

(b) HPG and YMG shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, 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 Program 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 Program Agreement to be signed in their respective names as of the day and year first above written, and to be delivered at the principal office of ADB.

ASIAN DEVELOPMENT BANK

By 
BENEDICT BINGHAM
Authorized Signatory

HUBEI PROVINCIAL GOVERNMENT

By 
HUANG CHUPING
Authorized Signatory

YICHANG MUNICIPAL GOVERNMENT

By 
ZHANG JIASHENG
Authorized Signatory

SCHEDULE

Implementation Arrangements

1. HPG and YMG shall ensure that the Program is implemented in accordance with the detailed arrangements set forth in the PID. Any subsequent change to the PID shall become effective only after approval of such change by the Borrower, through HPG and YMG, and ADB. In the event of any discrepancy between the PID and this Program Agreement, the provisions of this Program Agreement shall prevail.

DLI Compliance and Dialogue

2. HPG and YMG shall ensure that all DLIs achieved under the Program continue to be complied with for the duration of the Program.

3. HPG and YMG shall keep ADB informed of discussions with other multilateral or bilateral aid agencies that may have implications for the implementation of the Program and shall provide ADB with an opportunity to comment on any resulting proposals. The Borrower shall give due consideration to ADB's views before finalizing and implementing any such proposal.

Request for Proposals for Consultants

4. HPG and YMG shall ensure that the PPP Consultants (a) are appointed under a request for proposals document acceptable to ADB; and (b) have significant and verifiable qualifications, experience and expertise (i) in the preparation, design, implementation and monitoring of international PPP, including in the ECS and healthcare sectors; and (ii) in designing and implementing capacity development programs for public sector entities, including for local and municipal governments.

5. HPG and YMG shall submit, or cause the PPP Consultants to submit, all deliverables produced by the PPP Consultants, including (a) the value for money analysis; (b) final financial model; and (c) social inclusions mechanisms, for ADB's prior review and approval.

ECS Providers

6. HPG and YMG shall ensure that the ECS Providers engaged under paragraph 2(b) of Schedule 1 to the Loan Agreement are appointed under PPP Agreements acceptable to ADB. YMG shall provide the draft bidding packages and draft PPP Agreements for the selection and engagement of all ECS Providers for ADB's review and approval before the bidding documents are issued and before the PPP Agreements are signed.

Program Action Plan

7. HPG and YMG shall ensure that all Program Actions set out in the Program Action Plan are implemented in a timely and efficient manner.

Environment

8. HPG and YMG shall ensure that all Program Actions in the area of environmental and social safeguards are implemented in a timely and efficient manner.

9. HPG and YMG shall ensure that no construction or rehabilitation works under the Program involve significant adverse environmental impacts that may be classified as Category A under the SPS. Prior to commencing any construction or rehabilitation works under the Program, HPG and YMG will conduct a screening to ensure that any works that may be classified as Category A for environment impacts within the meaning of SPS are excluded from the Program.

10. HPG and YMG shall ensure that the preparation, design, construction, implementation, operation and decommissioning of all activities under the Program comply with: (a) all applicable laws, regulations and guidelines of the government relating to environment, health and safety; (b) the Environmental Safeguards as set out in the SPS; and (c) all measures and requirements, including monitoring requirements set forth in the Program Action Plan.

Land Acquisition and Resettlement

11. HPG and YMG shall ensure that the Program does not involve any resettlement risks or impacts within the meaning of the SPS. If due to unforeseen circumstances, the Program involves any such impacts, HPG and YMG shall ensure that the Program complies with (a) all applicable laws and regulations of the government relating to resettlement; (b) Involuntary Resettlement Safeguards as set out in the SPS; and (c) all measures and requirements, including monitoring requirements set forth in the Program Action Plan.

Indigenous Peoples

12. HPG and YMG shall ensure that the preparation, design, construction, implementation, operation and decommissioning of all activities under the Program comply with: (a) all applicable laws and regulations of the Borrower relating to indigenous peoples; (b) Indigenous Peoples Safeguards; and (c) all measures and requirements, including monitoring requirements set forth in the Program Action Plan.

Labor Standards

13. HPG and YMG shall ensure that the preparation, design, construction, implementation and operation of all activities under the Program comply with core labor standards and all applicable labor laws and regulations of the Borrower.

Governance and Anticorruption

14. HPG and YMG shall ensure that the Program complies with the Anticorruption Guidelines and that all appropriate and timely measures are taken to prevent, detect and respond to allegations of fraud, corruption or any other prohibited activities relating to the Program in accordance with the Anticorruption Guidelines.

15. HPG and YMG shall (a) promptly inform ADB of any allegations of fraud, corruption or any other prohibited activities relating to the Program; and (b) cooperate fully with any investigation by ADB on such allegations and extend all necessary assistance, including providing access to all relevant records, for satisfactory completion of such investigation.

16. With 90 days of the Effective Date, YMG shall update its public website to (a) provide information on bidding procedures, bidders, contract awards and physical progress of the Program; (b) post the audited annual financial statements for the Program, as such financial statements become available; and (c) disseminate other relevant information on Program implementation.