
LOAN NUMBER 4035-PRC

PROJECT AGREEMENT

(Shaanxi Green Intelligent Transport and Logistics Management Demonstration Project)

between

ASIAN DEVELOPMENT BANK

and

SHAANXI PROVINCIAL GOVERNMENT

DATED 12 March 2021

PRC 51401

PROJECT AGREEMENT

PROJECT AGREEMENT dated 12 March 2021 between ASIAN DEVELOPMENT BANK ("ADB") and SHAANXI PROVINCIAL GOVERNMENT ("SPG").

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 two hundred million Dollars (\$200,000,000) 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, through SPG, to SPTD and that SPG and SPTD agree to undertake certain obligations towards ADB set forth herein; and

(B) SPG, in consideration of ADB entering into the Loan Agreement with the Borrower, has 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 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

Subloans

Section 2.01. (a) Except as ADB may otherwise agree, the proceeds of the FI Loan, including any Reflow Funds, shall be used only for the Subloans, and the proceeds of the Subloans shall be applied exclusively to the cost of Goods and Works and other items of expenditure required to carry out such Qualified Subprojects.

(b) SPG, through SPTD, shall ensure that all Goods, Works and Services are procured in accordance with paragraph 4 of Schedule 4 to the Loan Agreement.

Section 2.02. (a) SPG, through SPTD, shall cause SPCIG to ensure that no Subloan is made with the proceeds of the FI Loan other than Reflow Funds, unless and until ADB has given its written non-objection to the proposed Subloan and subproject, which non-objection shall require SPTD to have furnished to ADB an appraisal

report, in form and content satisfactory to ADB, describing the Qualified Subproject, Qualified Subborrower and, for the first three Subloans, the related draft Project Implementing Contracts, and to have received ADB's written non-objection. SPG shall not request a withdrawal of the FI Loan or a withdrawal from the imprest account for any such Subloan until ADB has given its non-objection.

(b) Whenever, on or before the date referred to in section 3.08(c) of this Project Agreement, SPTD, through SPCIG, proposes to make a Subloan, where the proposed Subloan is in an amount exceeding \$2 million or such other sum as shall from time to time be agreed between ADB and SPG, SPTD shall, before agreeing to make the Subloan, submit to ADB an application for approval of the related Subloan. Such application shall be in a form satisfactory to ADB and shall contain a description and appraisal of the Qualified Subproject, Qualified Subborrower, the principal terms and conditions of the proposed Subloan and such other information as ADB shall reasonably request. A Subloan shall be deemed to exceed the amount specified in or agreed pursuant to this subsection if the amount of such Subloan, when added to the amount of any other Subloan or Subloans previously made or authorized for the same Qualified Subproject or Qualified Subborrower and not yet repaid exceeds the equivalent of the amount so specified or agreed. Notwithstanding the foregoing, SPTD shall submit to ADB an application for approval of the first Subloan for review.

Section 2.03. Each Subloan shall carry interest and fees, as applicable, at appropriate, market-based, rates and levels and shall be made for a tenor that reflects the needs of the Qualified Subproject, normally expected to be 3 to 5 years. Subloans shall be repaid into the REA, and their interests shall be paid into IDA. Each Subloan and any related Guarantee shall be made on terms whereby the Project Implementing Agencies or Guarantee Companies shall obtain, by a written agreement with the Qualified Subborrower in form acceptable to ADB, rights adequate to protect the interests of the Borrower, SPG, SPTD and ADB.

Section 2.04. SPG, through SPTD, shall cause SPCIG to ensure that each Subborrower, prior to receiving any financial assistance from the Project, enters into an Subloan Agreement, in form satisfactory to ADB and that reflects the applicable requirements of the Loan Agreement and this Project Agreement in addition to any other provisions a prudent financier would request. SPG, through SPTD, shall cause SPCIG to ensure, and shall require the FI to ensure, that all Subloans are subject to early prepayment and other remedies of the lender if there is a breach of the related Subproject Agreement.

Section 2.05. SPG, through SPTD, shall cause SPCIG to ensure that each Qualified Subborrower, prior to receiving any financial assistance from the Project, enters into a Subproject Agreement that is clearly linked to the related Subloan Agreement. Without limiting the foregoing, each Subproject Agreement shall describe clearly and in reasonable detail the Qualified Subproject for which the Subloan is to be used and shall include provisions to the effect that:

- (a) the Qualified Subborrower shall carry out and operate the Qualified Subproject with due diligence and efficiency and in accordance with sound applicable technical, financial, business and development practices, including maintenance of adequate accounts and records;

- (b) ADB and SPG shall each have the right to inspect all Goods and Works related to the Subproject or the Subloan, the Qualified Subborrower, the Qualified Subproject and any relevant records and documents;
- (c) the Qualified Subborrower shall take out and maintain with responsible insurers insurance against such risks and in such amounts as shall be consistent with sound business practice;
- (d) ADB and SPG shall each be entitled to obtain all such information as each shall reasonably request relating to the Subloan, the Goods and Works, the Qualified Subproject, the Qualified Subborrower and related matters;
- (e) the Qualified Subborrower shall design, build, implement, monitor and report on its Qualified Subproject in compliance with all relevant requirements of the Safeguards Policy Statement as set out in the ESMS;
- (f) SPCIG shall be entitled to suspend or terminate further access by the Qualified Subborrower to the use of the proceeds of the related Subloan and/or may accelerate payment of the Subloan, upon failure by the Qualified Subborrower to perform its obligations under the Subproject Agreement;
- (g) the Qualified Subborrower shall maintain sound financial management systems in accordance with ADB's Financial Management and Analysis of Projects, including the establishment of separate Project accounts and the maintenance of minimum balances to ensure smooth cash flow and the timely settlement of Project related liabilities and future debt servicing;
- (h) the Qualified Subborrower shall ensure that Goods, Works and Services, shall be used exclusively in carrying out the Qualified Subproject for which they were provided; and
- (i) where, and to the extent, the Qualified Subborrower undertakes procurement of Goods, Works and Services, it shall procure such Goods, Works and Consulting Services with due attention to economy and efficiency and in accordance with established private sector or commercial practices acceptable to ADB.

Section 2.06. SPG shall promptly and effectively exercise its rights in relation to each Qualified Subproject and the Project Implementing Contracts, and shall cause the FI to exercise its rights, in accordance with the standards of a prudent financier and in such manner as to protect the interests of the Borrower, SPG and ADB.

Section 2.07. SPG shall not make or permit any changes to any Project Implementing Contracts without ADB's prior written consent.

ARTICLE III

Particular Covenants

Section 3.01. (a) SPG, through SPTD, shall carry out, and shall cause, through SPCIG, the FI to carry out, the Project or Subproject, as the case may be, with due diligence and efficiency, and in conformity with sound applicable technical, financial, business, and development practices.

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

(c) For FI Loan, SPG, through SPTD, shall at all times cause SPCIG to make adequate provision to protect themselves against any loss resulting from changes in the rate of exchange between CNY and the currency or currencies in which SPG's outstanding money obligations will have to be met.

(d) For FI Loan, SPG, through SPTD, shall cause SPCIG not to make a Subloan to any Qualified Subborrower unless such Qualified Subborrower has at its disposal, or has made appropriate arrangements to obtain as and when required, all local currency funds, including adequate working capital, and other resources which are required by such Subborrower for the carrying out of its Subproject in respect of which the Subloan is to be made.

Section 3.02. SPG, through SPTD, shall make available, promptly as needed, the funds, facilities, services, land and other resources as required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 3.03. (a) In the carrying out of the Project, SPG, through SPTD, shall 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, SPG, through SPTD, shall procure all items of expenditures to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where any such item has 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.

(c) SPG, through SPTD, shall, and shall cause PIEs to, engage a procurement agent to carry out the Project in accordance with the terms and conditions set forth in the Procurement Plan. SPG shall ensure that such procurement agent follows all of the requirements of the Loan Agreement, this Project Agreement and the Procurement Plan.

Section 3.04. SPG, through SPTD, shall carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. SPG, through SPTD, 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 3.05. (a) SPG, through SPTD, shall take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, SPG, through SPTD, undertakes to insure, or cause to be insured, the Goods to be imported for the Project 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 3.06. SPG, through SPTD, shall maintain, or cause to be maintained, records and accounts adequate to identify the 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 3.07. (a) ADB and SPG shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

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

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

Section 3.08. (a) SPG, through SPTD, 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 Project and Subprojects; (iii) the Qualified Subborrowers, the Qualified Subprojects and the Subloans; (iv) the administration, operations and financial condition of SPTD, PIEs and FI; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, SPG, through SPTD, shall furnish to ADB periodic reports on the execution of the Project and on the operation and management of the Project facilities and FI. 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 period under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following period.

(c) Promptly after physical completion of the Project, but in any event not later than 3 months thereafter or such later date as ADB and SPTD may agree for this purpose, SPG, through SPTD, 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 utilization of the FI Loan, the execution of the Qualified Subprojects, their costs, the performance by SPG and the FI of their respective obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 3.09. (a) SPG, through SPTD, shall, and shall cause the FI to, (i) maintain separate accounts and records for the Project and the Qualified Subprojects; (ii) prepare annual financial statements for the Project including annual statements of utilization of funds for the Qualified Subprojects in accordance with accounting principles acceptable to ADB; (iii) have such financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iv) as part of each such audit, have the auditors prepare a report, which includes the auditors' opinion(s) on the statements and the use of the proceeds of the Loan, and a management letter (which sets out the deficiencies in the internal control of the Project that were identified in the course of the audit, if any); and (v) furnish to ADB, no later than 6 months after the close of the fiscal year 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 Project 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.

(c) In addition to annual audited financial statements referred to in subsection (a) hereinabove, SPG, through SPTD, shall cause FI to (i) provide its annual financial statements prepared in accordance with financing reporting standards acceptable to ADB; (ii) have its financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (iii) as part of each such audit, have the auditors prepare the auditors' opinion(s) on the financial statements; and (iv) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements and auditors' opinion(s), 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.

(d) SPG, through SPTD, shall, and shall cause the FI to, enable ADB, upon ADB's request, to discuss the statements of utilization of funds for the FI, and the financial statements for the Project and the FI, and their financial affairs where they relate to the Project with the auditors appointed by SPG, the Project Implementing Agencies and the FI pursuant to subsections (a)(iii) and (c)(ii) 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 SPG and the FI, unless they shall otherwise agree.

Section 3.10. SPG, through SPTD, shall enable ADB's representatives to inspect the Project, any Qualified Subborrower, any Qualified Subproject, Goods and Works financed out of the proceeds of the Loan, and any relevant records and documents.

Section 3.11. (a) SPG, through SPTD, shall cause, through SPCIG, the FI to, promptly as required, take all action within its powers to maintain its corporate existence, to carry on their 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 their business.

(b) SPG, through SPTD, 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.

(c) SPG, through SPTD, shall at all times operate and maintain their 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 applicable technical, financial, business, development, operational and maintenance practices.

Section 3.12. Except as ADB may otherwise agree, SPG, through SPTD, 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 items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 3.13. (a) Except as ADB may otherwise agree, SPG, through SPTD, shall, and shall cause the FI to, duly perform all their obligations under the Loan Agreement, and shall not take, or concur in, any action which would have the effect of assigning, amending, abrogating or waiving any rights or obligations of the parties under the Loan Agreement.

(b) SPG, through SPTD, shall include a provision in the relevant Framework Cooperation Agreement to the effect that the concerned FI shall ensure that each of its subsidiaries (if any) observe and perform the obligations of the FI under this Project Agreement to the extent to which such obligations may be applicable thereto, as though such obligations were binding upon each of such subsidiaries.

ARTICLE IV

Effective Date; Termination

Section 4.01. This Project Agreement shall come into force and effect on the date on which the Loan Agreement comes into force and effect. ADB shall promptly notify SPG of such date.

Section 4.02. This Project 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.

Section 4.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

ARTICLE V

Miscellaneous

Section 5.01. 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, 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) 8636-2444
(632) 8636-2302

For SPG

Shaanxi Provincial Government
Xincheng
Lianhu District
Xi'an
Shaanxi

Facsimile Number:

0086-29-87611704

Shaanxi Provincial Transport Department
No. 6 Tangyan Road
Yanta District
Xi'an
Shaanxi
710075

Facsimile Number:

0086-29-88869011

Shaanxi Provincial Finance Department
No. 6 Bingjiao Street
Lianhu District
Xi'an
Shaanxi
710002

Facsimile Number:

0086-29-87627009.

Section 5.02. (a) Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Project Agreement or under Section 7.01 of the Loan Agreement by or on behalf of SPG may be taken or executed by its governor or vice governor, or by such other person or persons as he or she shall so designate in writing notified to ADB.

(b) SPG shall furnish to ADB sufficient evidence of the authority of each person who will act under subsection (a) hereinabove, together with the authenticated specimen signature of each such person.

Section 5.03. 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 as of the day and year first above written, and to be delivered at the principal office of ADB.

ASIAN DEVELOPMENT BANK

By 

YOLANDA FERNANDEZ LOMMEN
Authorized Signatory

SHAANXI PROVINCIAL GOVERNMENT

By 

WEI ZENGJUN
Authorized Signatory

SCHEDULE

Execution of Project; Environmental, Social, Financial and Other Matters

Implementation Arrangements

1. SPG, through SPTD, shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by SPG, through SPTD, and ADB. In the event of any discrepancy between the PAM and the Project Agreement, the provisions of this Project Agreement shall prevail.
2. SPG, through SPTD, shall ensure that the PMO are equipped with professionally skilled staff, reasonable office space, equipment, and the Project Implementing Agencies shall provide financial resources required throughout the Project implementation.

Labor Standards, Health, and Safety

3. SPG, through SPTD, shall ensure that the core labor standards and the applicable laws and regulations of the Borrower are complied with during Project implementation. SPG, through SPTD, shall include, and shall, directly and through the FI, cause the Subborrowers to include, specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things (a) comply with the applicable labor law and regulations of the Borrower and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) do not restrict the workers from developing a legally permissible means of expressing their grievances and protecting their rights regarding working conditions and terms of employment; (f) do not delay any lawful payment to the workers; and (g) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women. SPG, through SPTD, shall further ensure that this paragraph shall be applicable to any workers regardless of their nationality, and strictly monitor compliance with the requirements set forth in this paragraph and provide ADB with semiannual reports.

Governance and Anticorruption

4. SPG (a) acknowledge, and cause the FI and the Qualified Subborrowers to acknowledge, ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project and the Qualified Subprojects; and (b) agree to cooperate, and shall cause the FI, the Qualified Subborrowers and all other government offices, organizations and entities involved in implementing the Project to cooperate, fully with any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation. In particular, SPG shall ensure that (a) periodic inspections of the Project contractors' activities related to fund withdrawals and settlements are carried out; (b) relevant provisions of ADB's Anticorruption Policy (1998, as amended to date) are included in all bidding documents for the Project including any Qualified Subprojects; and (c) contracts, financed under the Project, include provisions specifying the right of ADB to

audit and examine the records and accounts of SPG, the FI, the Qualified Subborrowers, contractors, suppliers, consultants, and other service providers as they relate to the Project. SPG shall further ensure that the FI maintains proper internal controls in its operations and shall cause the FI to adopt acceptable computerized accounting and management information system, and prepare financial statements and reports in accordance with national accounting standards.

5. SPG, through SPTD, shall develop and maintain relevant websites that describe the Project in order to provide the public with information on the Project and Project progress including setting out (a) a summary of the audited financial statements of the Project, (b) the Procurement Plan and tracking of procurement contract awards, (c) any proposed tariff increases and associated scheduled public hearings, (d) relevant laws and regulations; and (e) job opportunities.

Social and Gender Action Plan

6. SPG, through SPTD, shall ensure that (a) the SGAP is fully implemented in a timely manner over the entire period of the Project in accordance with its terms; (b) the bidding documents and contracts include relevant provisions for contractors to comply with the measures set forth in the SGAP; (c) adequate resources are allocated for this purpose; and (d) progress on implementation of the SGAP, including progress toward achieving key gender and social outcome and output targets, are monitored and reported to ADB semi-annually.

Annual Audited Financial Statement for PIEs

7. SPG, through SPTD, shall cause each of PIEs to (a) provide its annual financial statements prepared in accordance with financing reporting standards acceptable to ADB; (b) have its financial statements audited annually by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB, in accordance with auditing standards acceptable to ADB; (c) as part of each such audit, have the auditors prepare the auditors' opinion(s) on the financial statements; and (d) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements and auditors' opinion(s), 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.

8. SPG, through SPTD, shall cause PIEs to enable ADB, upon ADB's request, to discuss the financial statements for the PIEs and their financial affairs where they relate to the Project with the auditors appointed by PIEs pursuant to paragraph 7(b) 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 the concerned PIE, unless such PIE shall otherwise agree.

A. Specific Assurances for Investment Component

Environmental

9. SPG shall ensure that the preparation, design, construction, implementation,

operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions (i) set forth in a Safeguards Monitoring Report, or (ii) subsequently agreed between ADB and SPG.

10. SPG and the Project Implementing Agencies shall ensure that throughout Project implementation, (a) any changes to the project design that may potentially cause negative environmental impacts are reviewed; (b) in consultation with ADB, environmental monitoring and mitigation measures are revised as necessary to assure full environmental compliance; and (c) provide ADB within 60 days justification for any proposed changes to the mitigation measures required during design, construction and operation.

Involuntary Resettlement

11. SPG shall ensure, and cause the Project Implementing Agencies to ensure, that the time-bound agreed corrective actions in the due diligence reports are implemented in a timely and satisfactory manner.

Indigenous Peoples

12. SPG shall ensure, and cause the Project Implementing Agencies to ensure, that the Project does not have any indigenous peoples impacts, within the meaning of the SPS. In the event that the Project does have any such impact, SPG shall take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the SPS.

Human and Financial Resources to Implement Safeguards Requirements

13. SPG and the Project Implementing Agencies shall make available necessary budgetary and human resources to fully implement the EMP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

14. The Project Implementing Agencies shall ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

- (a) comply with the measures relevant to the contractor set forth in the IEE and the EMP (to the extent they concern impacts on the respective affected people under the Environmental Safeguards during construction), and any corrective or preventative actions set forth in (i) a Safeguards Monitoring Report, or (ii) subsequently agreed between ADB and SPG;
- (b) make available a budget for all such environmental measures;
- (c) provide SPG with a written notice of any unanticipated environmental risks or impacts that arise during construction, implementation or

operation of the Project that were not considered in the IEE and the EMP; and

- (d) submit semi-annual monitoring reports to ADB in accordance with the agreed time-bound actions specified in the due diligence reports

Safeguards Monitoring and Reporting

15. The Project Implementing Agencies shall:

- (a) submit Safeguards Monitoring Reports to ADB semi-annually during construction and the implementation of the Project and the EMP, and thereafter annually during operation, until the issuance of ADB's Project completion report unless a longer period is agreed in the EMP and disclose relevant information from such reports to the respective affected people under the Environmental Safeguards promptly upon submission;
- (b) if any unanticipated environmental risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE and the EMP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and
- (c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP promptly after becoming aware of the breach.

Prohibited List of Investments

16. The Project Implementing Agencies shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Grievance Redress Mechanism

17. SPG shall further ensure that within 60 days after the Effective Date, a grievance redress mechanism acceptable to ADB is established for non-safeguards complaints. In each case, such mechanism shall function to (a) review and document eligible complaints of Project stakeholders; (b) proactively address grievances; (c) provide the complainants with notice of the chosen mechanism and/or action; and (d) prepare and make available to ADB upon request periodic reports to summarize (i) the number of complaints received and resolved, (ii) chosen actions, and (iii) final outcomes of the grievances and make these reports available to ADB upon request. Eligible non-safeguards complaints include those related to the Project, any of the service providers, any person responsible for carrying out the Project, complaints on misuse of funds and other irregularities as well as gender issues.

18. SPG shall ensure that safeguards grievance redress mechanisms acceptable to ADB is established in accordance with the provisions of the IEE and EMP at the PMO, within the timeframes specified in the relevant IEE and EMP, to consider safeguards complaints.

Operation and maintenance

19. SPG and the Project Implementing Agencies shall ensure that (a) all assigned O&M units shall be fully involved in the Project implementation, including professional staff from the O&M units participating in Project design, the bidding, and implementation of contracts, and the acceptance of the completed Works; (b) assigned O&M units prepare (i) a sustainable O&M plan; and (ii) a budget plan on an annual basis for O&M; and (c) they are provided with sufficient financial and staffing resources.

B. Specific Assurances for FI Component

Selection of Subprojects

20. SPG, through SPTD, shall cause SPCIG to ensure that the FI (a) select and approve all Qualified Subprojects to be financed under the Project, except for the Subprojects already selected by ADB, in accordance with the detailed procedures as agreed between ADB and SPG and the Selection Criteria as fully described in the PAM; and (b) execute each Project Implementing Contracts on terms and conditions as referred to in the relevant provisions under the Loan and Project Agreements.

Social Safeguards

21. SPG, through SPTD, shall ensure, and shall cause the FI to ensure, that (a) the Qualified Subborrowers design, construct, and operate the Project in accordance with the relevant laws and regulations of the Borrower, SPS, and the ESMS; and (b) Qualified Subprojects are selected in accordance with the Selection Criteria to specifically ensure that subproject proposals are screened in accordance with the ESMS to confirm that there are no social safeguard impacts.

Environment

22. SPG, through SPTD, shall cause SPCIG to require the Qualified Subborrowers to ensure that (a) the Qualified Subproject is designed, constructed, and operated in accordance with the environmental laws and regulations of the Borrower, SPS, and the ESMS; (b) the institutional arrangements for effective implementation of environmental safeguards (as described in the ESMS) are in place before commencement of Works construction and selection of future Subprojects; (c) procedures, as specified in the ESMS, are fully implemented in a timely manner; (d) mitigation measures included in the Qualified Subprojects' environmental impact assessment or initial environmental examination reports are updated at the detail engineering design stage and incorporated into the bidding documents and Works contracts; (e) any adverse impact on the environment that may arise from Qualified Subproject implementation activities is promptly mitigated or minimized and reported to ADB in accordance with the ESMS; (f) the ESMS and environmental management plan is implemented in full to address the environmental aspects during the construction of the Project, including actions to be taken for auditing, measuring, and monitoring the environment and

safety conditions of the Works, and responding to breaches in environmental or safety requirements; and (g) environmental and safety aspects, and issues are reported on an annual basis to ADB.

23. SPG, through SPTD, shall cause SPCIG to ensure that (a) all Qualified Subprojects to be financed through the FI Loan are screened as per the procedures in the ESMS; and (b) as part of ESMS, the Environmental and Social Unit of the FI submits to ADB for prior review and approval the proposed safeguards classifications and a project description for the first two Qualified Subprojects of a target sector classified as environment Category B. If such proposed safeguards classifications and a project description is satisfactory to ADB, any subsequent Qualified Subprojects shall only be subject to post review in the annual ESMS performance report required to be submitted annually by the FI to ADB as described in the ESMS.

Safeguards - Prohibited List of Investments

24. SPG, through SPTD, shall cause SPCIG to ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the Safeguards Policy Statement.

Project Implementing Contracts

25. Not later than when it enters into or makes any commitment to enter into any financing arrangement contemplated to be supported by the Project or when it permits any of its subsidiaries or representatives to do so, SPG, through SPTD, shall or shall cause the FI and other transaction participants to enter into the Project Implementing Contracts, in form and substance acceptable to ADB and that reflect relevant requirements of the Loan Agreement, this Project Agreement and the PAM.

Financing of Any Qualified Subprojects after the Loan Closing Date

26. SPG, through SPTD, shall cause SPCIG to ensure that after the Loan Closing Date, any subproject to be financed through REA shall be selected and implemented in accordance with all the provisions under the Loan Agreement and this Project Agreement to the extent that they are applicable to such subprojects. In particular, all such subprojects shall be selected in accordance with the Selection Criteria and implemented in accordance with the ESMS.

Interest Difference Account

27. Within 3 years of the Effective Date, SPG, through SPTD, shall cause SPCIG to develop guidelines, in a manner and substance acceptable to ADB, for managing IDA. IDA shall be used to (a) cover potential loan loss from Subloans, (b) shoulder currency exchange risk hedging cost, and (c) any other expenditures as agreed in the PAM. SPG shall ensure that no disbursements shall be made from IDA until the guidelines have been in place, and further ensure that IDA shall be established, maintained, replenished and liquidated for supporting the Project in accordance with the terms in the guidelines.