
LOAN NUMBER 3218-PRC

PROJECT AGREEMENT

(Low-Carbon District Heating Project in Hohhot in Inner Mongolia Autonomous Region)

between

ASIAN DEVELOPMENT BANK

and

GOVERNMENT OF INNER MONGOLIA AUTONOMOUS REGION

DATED 19 MARCH 2015

PRC 47052

PROJECT AGREEMENT

PROJECT AGREEMENT dated 19 March 2015 between ASIAN DEVELOPMENT BANK ("ADB") and GOVERNMENT OF INNER MONGOLIA AUTONOMOUS REGION ("GIMAR").

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 one hundred fifty million Dollars (\$150,000,000) 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 GIMAR and Hohhot Municipal Government ("HMG"), to the Hohhot City Development, Investment, and Operation Company ("HCDIO") and the Hohhot Chengfa Heating Company ("HCHC") and that GIMAR agrees to undertake certain obligations towards ADB set forth herein;

(B) the Project has applied to a commercial bank for a loan in an amount equivalent to one hundred sixty-two million four hundred thousand Dollars (\$162,400,000) to finance parts of the Project upon terms and conditions set forth in the loan agreement between HCDIO and such commercial bank; and

(C) GIMAR, 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

Particular Covenants

Section 2.01. (a) GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, carry out the Project 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, GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, perform all obligations set forth in the Loan Agreement to the extent that they are applicable to GIMAR, HCDIO and HCHC, and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, 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 2.03. (a) In the carrying out of the Project, GIMAR shall, through HMG, cause HCDIO and HCHC 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, GIMAR shall, through HMG, cause HCDIO and HCHC to 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.

Section 2.04. GIMAR shall, through HMG, cause HCDIO and HCHC to carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. GIMAR shall, through HMG, cause HCDIO and HCHC to furnish, or cause to be furnished, to ADB, promptly after their preparation, such plans, design standards, specifications and work schedules, and any material modifications subsequently made therein, in such detail as ADB shall reasonably request.

Section 2.05. (a) GIMAR shall, through HMG, cause HCDIO and HCHC to 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, GIMAR shall, through HMG, cause HCDIO and HCHC to undertake 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 2.06. GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, 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 2.07. (a) ADB and GIMAR shall, and GIMAR shall, through HMG, cause HCDIO and HCHC to, cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, 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, GIMAR, HMG, HCDIO and HCHC 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, GIMAR, HMG, HCDIO, HCHC and the Loan.

Section 2.08. (a) GIMAR shall, and shall, through HMG, cause HCDIO and HCHC 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 items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of HCDIO and HCHC; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, GIMAR shall, through HMG, cause HCDIO and HCHC to furnish to ADB periodic 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 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 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, HMG, HCDIO and HCHC of their obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, (i) maintain separate accounts and records for the Project; (ii) prepare annual financial statements for the Project in accordance with accounting principles acceptable to ADB; (iii) have such financial statements for the Project 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; (iv) 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 as well as on the use of the procedures for imprest fund and statement of expenditures) and a Management Letter; and (v) furnish to ADB, no later than 6 months after the end of each related fiscal year, 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 30 days of the date of their receipt by posting them on ADB's website.

(c) In addition to annual audited financial statements referred to in subsection (a) hereinabove, GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, (i) provide their annual financial statements prepared in accordance with national accrual-based financing reporting standards acceptable to ADB; (ii) have their financial statements 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; and (iii) furnish to ADB, no later than 1 month after approval by the relevant authority, copies of such audited financial statements 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) GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, enable ADB, upon ADB's request, to discuss the financial statements for the Project, HCDIO and HCHC and their financial affairs where they relate to the Project with the auditors as described in subsections (a)(iii) and (c) 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 GIMAR, HCDIO and HCHC, unless GIMAR, HCDIO and HCHC shall otherwise agree.

Section 2.10. GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, enable ADB's representatives to inspect the Project, the Goods and any relevant records and documents.

Section 2.11. (a) GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, promptly as required, take all action within their powers to maintain their 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 their operations.

(b) GIMAR shall, through HMG, cause HCDIO and HCHC to, at all times conduct their 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) GIMAR shall, through HMG, cause HCDIO and HCHC to, 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 applicable technical, financial, business, development, operational and maintenance practices.

Section 2.12. Except as ADB may otherwise agree, GIMAR shall, through HMG, cause HCDIO and HCHC not to 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 their ability to perform satisfactorily any of their obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, GIMAR shall, through HMG, cause HCDIO and HCHC to 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 cause them to ensure that all items of expenditures financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. GIMAR shall, through HMG, cause HCDIO and HCHC to promptly notify ADB of any proposal to amend, suspend or repeal any provision of their charters, which, if implemented, could adversely affect the carrying out of the Project or the operation of the Project facilities. GIMAR shall, through HMG, cause HCDIO and HCHC to afford ADB an adequate opportunity to comment on such proposal prior to taking any affirmative 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 comes into force and effect. ADB shall promptly notify GIMAR of such date.

Section 3.02. 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 3.03. All the provisions of this Project Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the Loan Agreement.

ARTICLE 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, 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) 636-2534.

For GIMAR

No.19 Chilechuan Street, Hohhot
Inner Mongolia Autonomous Region
People's Republic of China

Facsimile Numbers:

(86) 04714192157
(86) 04716659039.

Section 4.02. (a) Any action required or permitted 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 Vice Governor, or by such other person or persons as he or she 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 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 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 
AYUMI KONISHI
Director General
East Asia Department

GOVERNMENT OF INNER MONGOLIA
AUTONOMOUS REGION

By 
ZHAO JIANHUA
Authorized Representative

SCHEDULE

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

Implementation Arrangements

1. GIMAR shall, through HMG, cause HCDIO and HCHC to 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 GIMAR and ADB. In the event of any discrepancy between the PAM and this Project Agreement, the provisions of this Project Agreement shall prevail.

2. GIMAR shall, through HMG, ensure that HCDIO and HCHC are equipped with professionally skilled staff, reasonable office space, equipment, and adequate financial resources required throughout the Project implementation.

Environment

3. GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, 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 EIA, EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Social Safeguards

4. GIMAR shall ensure that the Project does not have any involuntary resettlement and indigenous peoples impacts, all within the meaning of the Safeguard Policy Statement. In the event that the Project does have any such impact, GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the Safeguard Policy Statement.

Human and Financial Resources to Implement Safeguards Requirements

5. GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, make available the necessary budgetary and human resources to fully implement the EMP.

Safeguards-Related Provisions in Bidding Documents and Works Contracts

6. GIMAR shall, through HMG, cause HCDIO and HCHC to ensure that all bidding documents and contracts for civil works under the Project contain provisions that require contractors to:

Schedule

- (a) comply with the measures relevant to the contractor set forth in the EIA and the EMP, and any corrective or preventative actions set forth in (i) a Safeguards Monitoring Report, or (ii) subsequently agreed between ADB and GIMAR;
- (b) make available a budget for all environmental measures; and
- (c) provide GIMAR, through HCDIO and HCHC, with a written notice of any unanticipated environmental or social risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the EIA and EMP.

Safeguards Monitoring and Reporting

7. GIMAR shall, through HMG, cause HCDIO and HCHC to do the following:
- (a) submit Safeguard 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 or social risks and impacts arise during construction, implementation or operation of the project that were not considered in the EIA and EMP promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan;
 - (c) no later than 6 months of the Effective Date, engage qualified and experienced external experts or qualified institutions under a selection process and terms of reference acceptable to ADB, to verify information produced through the Project monitoring process, and facilitate the carrying out of any verification activities by such external experts; and
 - (d) 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

8. GIMAR 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 Safeguard Policy Statement.

Gender and Development

9. GIMAR shall, through HMG, cause HCDIO and HCHC to follow the principles of the ADB's Policy on Gender and Development (1998) and measures set out in the PAM during the implementation of the Project, including taking all the necessary actions to encourage women living in the project area to participate in the planning and implementing Project activities.

Health and Social Risks

10. GIMAR shall cause the appropriate government authorities, and, through HMG, HCDIO and HCHC to 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 implementation. Specific provisions to this effect shall be included in the bidding documents and civil works contracts under the Project, and compliance shall be strictly monitored by GIMAR, HMG, HCDIO and HCHC.

Labor and Employment

11. GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, ensure that contractors engaged under the Project: (a) are encouraged to use local labor and local materials in 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.

Counterpart Funding

12. 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 HCDIO and HCHC, GIMAR shall promptly inform the Borrower and ADB and provide additional funds as may be necessary for the successful implementation of the Project.

Change in Ownership and Operation

13. In the event that (a) 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 HCDIO and HCHC is anticipated, GIMAR shall consult and cause HCDIO and HCHC, as the case may be, to consult with ADB at least 6 months prior to the implementation of such change. GIMAR shall, and shall, through HMG, cause HCHC to, ensure that such change be carried out in a lawful and transparent matter.

Financial Performance of the Implementing Agency

14. GIMAR shall, through HMG and HCDIO, cause HCHC to establish and maintain sound financial management systems in accordance with ADB's Guidelines on the 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 construction liabilities and future debt servicing. In particular, HCHC shall maintain (a) a debt service coverage ratio of at least 1.2 times, and (b) a long-term debt-to-equity ratio to be not more than 80:20.

15. If, in the opinion of ADB, it appears that HCHC cannot meet the requirements set forth in paragraph 14 above or cannot meet any debt service obligations, GIMAR shall, through HMG and HCDIO, take appropriate measures for HCHC to strengthen its financial management systems, including, but not limited to, provision of necessary financing to HCHC.

Financial Performance of HCDIO

16. GIMAR shall cause HMG to ensure that HCDIO shall, all the time, meet any of its debt service obligations, and to take appropriate measures to that effect, including, but not limited to, provision of repayment guarantees to the concerned financial institutions.

Innovative Business Model

17. GIMAR shall, through HMG, ensure that wind power companies, Inner Mongolia Power Grid Company and HCDIO, representing HCHC will have executed an agreement by which (a) the wind power companies sell an additional hours of wind energy annually on an appropriate cost, which otherwise would have been curtailed; (b) Inner Mongolia Power Grid Company receives adequate wheeling charges to transmit this additional wind power; and (c) HCHC purchases wind energy at an affordable cost, and will maintain such agreement during the Project implementation and thereafter.

Institutional Strengthening

18. GIMAR shall, through HMG, cause HCDIO and HCHC to implement the Project in accordance with the implementation plan agreed upon, between GIMAR and ADB, in particular with regard to improving financial management and reporting, corporate governance, and management administration.

Grievance Redress Mechanism

19. GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, ensure that a safeguards grievance redress mechanism acceptable to ADB is established in accordance with the provisions of the EIA and EMP, within the timeframes specified in the relevant EIA and EMP, to consider safeguards complaints.

Schedule

20. GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, 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.

Governance and Anticorruption

21. GIMAR, HMG, HCDIO and HCHC (a) acknowledge ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project; and (b) agree to cooperate, and shall cause 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, GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, 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 are included in all bidding documents for the Project; and (c) contracts, financed under the Project, include provisions specifying the right of ADB to audit and examine the records and accounts of contractors, suppliers, consultants, and other service providers as they relate to the Project.

Monitoring and Evaluation

22. GIMAR shall, and shall, through HMG, cause HCDIO and HCHC to, ensure that Project outcomes and outputs are monitored and evaluated through a project performance monitoring system, as agreed to by GIMAR and ADB in accordance to the PAM.