
LOAN NUMBER 3217-PRC

PROJECT AGREEMENT

(Yunnan Pu'er Regional Integrated Road Network Development Project)

between

ASIAN DEVELOPMENT BANK

and

YUNNAN PROVINCIAL GOVERNMENT

PU'ER MUNICIPAL GOVERNMENT

DATED 25 JUNE 2015

PRC 46040

PROJECT AGREEMENT

PROJECT AGREEMENT dated 25 June 2015 between ASIAN DEVELOPMENT BANK (“ADB”) of the one part, and YUNNAN PROVINCIAL GOVERNMENT (“YPG”) and PU’ER MUNICIPAL GOVERNMENT (“PMG”) of the other part.

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 YPG, to PMG and that YPG and PMG agree to undertake certain obligations towards ADB set forth herein; and

(B) YPG and PMG, 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 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) YPG and PMG shall 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, YPG and PMG shall perform all obligations set forth in the Loan Agreement to the extent that they are applicable to YPG and PMG, and all obligations set forth in the Schedule to this Project Agreement.

Section 2.02. YPG shall, or shall cause PMG 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, YPG shall cause PMG to, and PMG 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, YPG shall cause PMG to, and PMG 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.

Section 2.04. YPG shall cause PMG to, and PMG shall, carry out the Project in accordance with plans, design standards, specifications, work schedules and construction methods acceptable to ADB. YPG and PMG 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. YPG shall cause PMG to, and PMG 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.

Section 2.06. YPG and PMG 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 2.07. (a) ADB and YPG and PMG shall cooperate fully to ensure that the purposes of the Loan shall be accomplished.

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

(c) ADB, YPG and PMG 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, YPG, PMG and the Loan.

Section 2.08. (a) YPG shall, or shall cause PMG 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 PMG; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, YPG shall cause PMG to, and PMG shall, 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, YPG shall cause PMG to, and PMG 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 YPG and PMG of their obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) YPG, through Yunnan Provincial Financial Department, and PMG shall (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) YPG and PMG shall enable ADB, upon ADB's request, to discuss the financial statements for the Project and their financial affairs where they relate to the Project with the auditors appointed by YPG and PMG pursuant to subsection (a)(iii) 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 YPG and PMG, unless YPG and PMG shall otherwise agree.

Section 2.10. YPG shall cause PMG to, and PMG shall, enable ADB's representatives to inspect the Project and Works and any relevant records and documents.

Section 2.11. Except as ADB may otherwise agree, YPG and PMG 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.

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 YPG and PMG 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 YPG

Yunnan Provincial Finance Department
Foreign Cooperation Division
Wuhuashan District
Kunming Municipality

Yunnan Province, 650021
People's Republic of China

Facsimile Number:

(86 871) 6363 1025.

For PMG

Pu'er ADB Project Management Office
2nd Fl. Jinse Nianhua Community
Xue Yuan Road
Pu'er City
Yunnan Province
People's Republic of China

Facsimile Number:

(86 879) 281 9198.

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 YPG may be taken or executed by its governor or vice governor and, by or on behalf of PMG may be taken or executed by its mayor or vice mayor; or, in either case, by such other person or persons as they shall designate in writing notified to ADB.

(b) YPG and PMG 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

YUNNAN PROVINCIAL GOVERNMENT

By 
ZHAO JIANHUA
Authorized Representative

PU'ER MUNICIPAL GOVERNMENT

By 
ZHAO JIANHUA
Authorized Representative

SCHEDULE

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

A. Implementation Arrangements

1. YPG shall cause PMG to, and PMG 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 YPG, PMG and ADB. In the event of any discrepancy between the PAM and this Project Agreement, the provisions of this Project Agreement shall prevail.

B. Environmental

2. PMG shall ensure or cause 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, the EMP, and any corrective or preventative actions (i) set forth in a Safeguards Monitoring Report, or (ii) which are subsequently agreed between ADB and PMG.

3. PMG shall ensure that permanent and temporary land take for the Menglian-Meng'a Road shall avoid intact woodlands at road sections as specified and agreed in the EMP.

4. PMG shall ensure CO₂ emissions monitoring and annual reporting to ADB during the operation of the Project Rural Roads and Project regional roads up to year 2020, by conducting traffic counts annually and calculating CO₂ emissions, for comparison with ADB's CO₂ emission threshold of 100,000 tons annually for all the Project roads combined.

5. PMG shall ensure that the design of the Project roads takes into consideration climate change adaptation recommendations from the ADB funded climate change assessment study.

6. PMG shall ensure that the road section as specified and agreed in the EMP shall not traverse through Protection Zones 1 and 2 of the Wenquan Reservoir.

7. PMG shall ensure that there is no tree felling and siting of asphalt mixing and concrete batching station within the road section as specified and agreed in the EMP during its construction.

8. PMG shall ensure that the protected tree species at locations along the Ning'er-Longfu Road as specified under the EMP shall be marked, tagged and fenced off before commencement of the construction.

9. PMG shall ensure that noise mitigation measures are implemented. Such measures shall include road side noise barriers and provision of double-glazed windows at locations specified in the approved domestic Environmental Impact Assessment for the Menglian-Meng'a Road and the Ning'er-Longfu Road.

C. Resettlement

10. PMG shall ensure that all land and all rights-of-way required for the Project are made available to the Works contractor in a manner and within timeframes compliant with the RP and all land acquisition and resettlement activities are implemented in compliance with (a) all applicable laws and regulations of the Borrower relating to land acquisition and involuntary resettlement; (b) the Involuntary Resettlement Safeguards; and (c) all measures and requirements set forth in the RP, and any corrective or preventative actions (i) set forth in the Safeguards Monitoring Report, or (ii) subsequently agreed between ADB and PMG.

11. Without limiting the application of the Involuntary Resettlement Safeguards or the RP, PMG shall ensure that no physical or economic displacement takes place in connection with the Project until:

- (a) the RP is updated upon completion of the detailed design and detailed measurement survey and submitted to ADB for approval prior to commencement of land acquisition and/or house demolition and award of any civil contract;
- (b) such updated RP is disclosed to the affected peoples in accordance with ADB's disclosure requirements applicable for resettlement-related activities;
- (c) compensation and other entitlements have been provided to the displaced persons under the Involuntary Resettlement Safeguards as described in and in accordance with the RP; and
- (d) a comprehensive income and livelihood restoration program has been established in accordance with the RP to enhance, or at least to restore, the livelihoods of all affected persons in real terms relative to pre-project levels and to improve the standards of living of the poor and other vulnerable groups.

D. Indigenous Peoples

12. PMG shall ensure that the preparation, design, construction, implementation and operation of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to indigenous peoples; (b) the Indigenous Peoples Safeguards; and (c) all measures and requirements set forth in the EMDP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

13. In particular, PMG shall ensure that (a) targeted ethnic minorities are consulted and given adequate opportunity to participate in EMDP implementation; (b) targeted ethnic minorities benefit from the Project at least equitably and in accordance with the Safeguard Policy Statement; (c) Works contractor specifications include requirements to comply with the EMDP and as a priority to provide employment to ethnic minority people; (d) specifications under Works contracts include requirements to comply with the EMDP and to take necessary measures to avoid loss of sacred trees/relics during project construction; and (e) the measures developed to deal with possible human and drug trafficking under the EMDP are effectively implemented.

E. Human and Financial Resources to Implement Safeguards Requirements

14. YPG shall make available or cause PMG to make available necessary budgetary and human resources to fully implement the EMP, the RP and EMDP. In particular, PMG shall ensure that (a) counterpart funds are provided on a timely basis for land acquisition and resettlement activities, and any obligations in excess of resettlement plan budget estimates are met; (b) adequate staff and resources are committed to monitoring and supervision of implementation of RP and EMDP; and (c) YPG or PMG's additional budget allocations are committed to finance the implementation costs of the Project wildlife, human and drug trafficking interventions.

F. Safeguards-Related Provisions in Bidding Documents and Works Contracts

15. PMG shall ensure or cause the Pu'er Municipal Transport Bureau to 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 EIA, the EMP, the RP and the EMDP (to the extent they concern impacts on the respective affected people under the Environmental Safeguards, the Involuntary Resettlement Safeguards and the Indigenous Peoples Safeguards during construction), and any corrective or preventative actions set forth in (i) the Safeguards Monitoring Report, or (ii) subsequently agreed between ADB and PMG;
- (b) make available a budget for all such environmental and social measures;
- (c) provide PMG with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the EIA, the EMP, the RP and the EMDP;
- (d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction;
- (e) reinstate pathways, other local infrastructure, and agricultural lands to at least their pre-project condition upon the completion of construction; and

- (f) have fulfilled involuntary resettlement safeguards related obligations prior to making the final payment.

G. Safeguards Monitoring and Reporting

16. PMG shall do the following or cause the Pu'er Municipal Transport Bureau to do the following:

- (a) Submit Safeguards Monitoring Reports to ADB;
 - (i) in respect of implementation of and compliance with Environmental Safeguards and the EMP, quarterly during construction and the implementation of the Project and the EMP, and thereafter semi-annually during operation, until the issuance of ADB's Project completion report unless a longer period is agreed in the EMP; and
 - (ii) in respect of implementation of and compliance with Involuntary Resettlement Safeguards and Indigenous Peoples Safeguards, and of the RP and the EMDP, quarterly during the implementation of the Project and semi-annually thereafter for the RP and the EMDP until the issuance of ADB's Project completion report unless a longer period is agreed in the RP and EMDP,

and disclose relevant information from such reports to the respective affected people under the Environmental Safeguards, the Involuntary Resettlement Safeguards and the Indigenous Peoples Safeguards promptly upon submission by posting them on the website PMG maintains for the Project and also in an accessible place or places and in a form understandable to affected people;

- (b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the EIA, the EMP, the RP and the EMDP, 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 1 month after the Effective Date, engage qualified and experienced external experts 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 evaluation by such external experts;
- (d) prior to the commencement of Works, engage external resettlement monitoring specialists acceptable to ADB;
- (e) no later than 1 month after the Effective Date, engage an independent advisory panel to monitor and report upon Project

implementation, and facilitate the carrying out of any monitoring activities by such panel; and

- (f) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP, the RP or the EMDP promptly after becoming aware of the breach.

H. Prohibited List of Investments

17. PMG 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.

I. Construction Contracts

18. PMG shall ensure that Works contracts shall include provisions to require the contractors to (a) comply with all applicable labor laws on the prohibition of child and forced labor; (b) give equal pay for equal work regardless of gender, ethnicity or social group; (c) give priority to women and people affected by land acquisition and demolition especially the significantly affected people and vulnerable groups as defined in the RP, in the employment and training opportunities generated in the Project's construction and operation phases; (d) provide safe working conditions for both male and female workers; (e) maximize the employment of local people who meet the job and efficiency requirements for Project construction, operation and maintenance, in particular providing at least 40% of unskilled jobs under the Project to local people; and (f) provide such workers with adequate on-the-job and safety training.

19. PMG shall further ensure that the Works contractors shall (a) disseminate information on sexually transmitted diseases (including HIV/AIDS) to sub-contractors/employees and local communities surrounding the Project construction sites; (b) implement HIV/AIDS awareness and prevention training for sub-contractors/employees; (c) provide necessary measures to ensure the safety and health of its sub-contractors/employees; and (d) observe local customs concerning acceptable behavior towards the local population.

J. Gender Action Plans

20. PMG shall ensure that (a) the GAP is implemented, monitored in a timely manner, and reported to ADB through Project progress reports prepared in accordance with ADB's Policy on Gender and Development (1998) and the PPMS and that adequate resources are allocated for this purpose; (b) PMG shall appoint and put into place a gender expert under the capacity building consultancy services; (c) all targets under the GAP are achieved; (d) progress in achieving the GAP targets are reflected in the Project progress reports and Project completion report through collection and compilation of sex-disaggregated data, where relevant; (e) all bidding documents include provisions as specified in the GAP; and (f) consolidated annual report on GAP implementation is submitted to ADB.

K. Grievance and Redress Mechanism

21. PMG shall further ensure that within 60 days of the Effective Date, a grievance redress mechanism acceptable to ADB is established for non-safeguards complaints. 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 shall 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.

22. PMG shall ensure that safeguards grievance redress mechanisms acceptable to ADB are established in accordance with the provisions of the EIA, EMP, RP and EMDP at the Project management office, within the timeframes specified in the relevant EIA, EMP, RP and EMDP, to consider safeguards complaints.

L. Change in Ownership

23. PMG shall ensure that during the Project implementation, in the event of (a) any change in the ownership or control of Project facilities; or (b) any sale, transfer or assignment of share or interest that results in a change of control in any agency owning or managing any Project facilities being anticipated, it shall cause the relevant agency to consult with ADB at least 6 months prior to the implementation of such change. PMG shall cause the said agency to further ensure that the new controlling management of the concerned agency complies with (a) all Project related agreements executed between ADB and the Borrower, YPG or PMG; and (b) the policies of ADB relevant to the Project.

M. Counterpart Funding

24. YPG shall cause PMG to provide counterpart funding in a timely manner, including any additional counterpart funding required for any shortfall of funds or cost overruns. YPG shall also cause PMG to ensure that operation and maintenance of all Project facilities is fully funded from either the income of tariffs or fees or from the government budget.

N. Project Rural Roads to be Financed by PMG

25. PMG shall ensure that, for the Project Rural Roads to be financed solely by counterpart funding, (a) the bidding process shall not commence until the commencement of bidding process for the Project Rural Roads to be financed using Loan proceeds; (b) all the Project Rural Roads shall meet the rural roads assessment criteria set out in the PAM and shall have identical design and implementation procedures; and (c) they shall be carried out in full compliance with the Project's road safety objectives, and subjected to (i) the Safeguard Policy Statement, and (ii) the Environmental Assessment and Review Framework and the resettlement framework documentation, all as agreed for the Project.

O. Road Safety

26. PMG shall ensure that the detailed design for all the Project roads conforms to a minimum 3-star ChinaRAP rating for all road users if deemed economic.

27. Prior to the commencement of use and/or operation of the Project roads, PMG shall ensure that independent road safety audits are carried out and appropriate remedial actions are taken to implement the recommendations of these audits in the operations of the Project roads.

P. Governance and Anticorruption

28. YPG and PMG (a) acknowledge ADB's right to investigate, directly or through their 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, YPG and PMG 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; and (c) contracts, financed under the Project, include provisions specifying the right of ADB to audit and examine the records and accounts of YPG, PMG, contractors, suppliers, consultants, and other service providers as they relate to the Project.

29. PMG 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) the procurement plan and tracking of procurement contract awards; (b) relevant laws and regulations; (c) job opportunities; and (d) disclosure of safeguard plans and Safeguards Monitoring Reports.