
LOAN NUMBER _____-PRC

PROJECT AGREEMENT
(Hunan Flood Management Sector Project)

between

ASIAN DEVELOPMENT BANK

and

HUNAN PROVINCIAL GOVERNMENT

DATED _____

PAL: PRC 37641

PROJECT AGREEMENT

PROJECT AGREEMENT dated _____ between ASIAN DEVELOPMENT BANK (hereinafter called ADB) and HUNAN PROVINCIAL GOVERNMENT (hereinafter called HnPG).

WHEREAS

(A) by a Loan Agreement of even date herewith between People's Republic of China (hereinafter called the Borrower) and ADB, ADB has agreed to make to the Borrower a loan of two hundred million dollars (\$200,000,000) on the terms and conditions set forth in the Loan Agreement, but only on condition that the proceeds of the Loan be made available to HnPG and that HnPG agree to undertake certain obligations towards ADB as hereinafter in this Project Agreement set forth; and

(B) HnPG, in consideration of ADB entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations hereinafter set forth;

NOW THEREFORE the parties hereto agree as follows:

ARTICLE I

Definitions

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

ARTICLE II

Particular Covenants

Section 2.01. (a) HnPG shall carry out the Project with due diligence and efficiency, and in conformity with sound administrative, financial, engineering, social, environmental and flood management practices.

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

Section 2.02. HnPG shall make available, promptly as needed, the funds, facilities, services, equipment, land and other resources which are required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 2.03. (a) In the carrying out of the Project, HnPG 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, all goods and services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 4 to the Loan Agreement. ADB may refuse to finance a contract where goods or services have not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

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

Section 2.05. (a) HnPG shall, during Project construction, take out and maintain with responsible insurers, or make other arrangements satisfactory to ADB for, insurance of the Project facilities to such extent and against such risks and in such amounts as shall be consistent with sound practice.

(b) Without limiting the generality of the foregoing, HnPG undertakes to insure, or cause to be insured, the goods to be imported for the Project and to be financed out of the proceeds of the Loan against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall be payable in a currency freely usable to replace or repair such goods.

Section 2.06. HnPG shall maintain, or cause to be maintained, records and accounts adequate to identify the goods and services 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 HnPG shall cooperate fully to ensure that the purposes of the Loan will be accomplished.

(b) HnPG 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 Onlending Agreements, or the accomplishment of the purposes of the Loan.

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

Section 2.08. (a) HnPG shall furnish to ADB all such reports and information as ADB shall reasonably request concerning (i) the Loan and the expenditure of the proceeds thereof; (ii) the goods and services and other items of expenditure financed out of such proceeds; (iii) the Project; (iv) the administration, operations and financial condition of

HnPG and each Local Government to the extent relevant to the Project; and (v) any other matters relating to the purposes of the Loan.

(b) Without limiting the generality of the foregoing, HnPG shall furnish to ADB quarterly 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 quarter under review, steps taken or proposed to be taken to remedy these problems, and proposed program of activities and expected progress during the following quarter.

(c) Promptly after physical completion of the Project, but in any event not later than three (3) months thereafter or such later date as ADB may agree for this purpose, HnPG 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 HnPG of its obligations under this Project Agreement and the accomplishment of the purposes of the Loan.

Section 2.09. (a) HnPG shall (i) maintain separate accounts for the Project and for its overall operations; (ii) have such accounts and related financial statements (balance sheet, statement of income and expenses, and related statements) audited annually, in accordance with appropriate auditing standards consistently applied, by independent auditors whose qualifications, experience and terms of reference are acceptable to ADB; and (iii) furnish to ADB, promptly after their preparation but in any event not later than six (6) months after the close of the fiscal year to which they relate, certified copies of such audited accounts and financial statements and the report of the auditors relating thereto (including the auditors' opinion on the use of the Loan proceeds and compliance with the covenants of the Loan Agreement as well as on the use of the procedures for imprest account/statement of expenditures), all in the English language. HnPG shall furnish to ADB such further information concerning such accounts and financial statements and the audit thereof as ADB shall from time to time reasonably request.

(b) HnPG shall cause each Local Government to enable ADB, upon ADB's request, to discuss its financial statements and its financial affairs from time to time with its auditors, and shall authorize and require any representative of such auditors to participate in any such discussions requested by ADB, provided that any such discussion shall be conducted only in the presence of an authorized officer of the relevant Local Government unless HnPG shall otherwise agree.

Section 2.10. HnPG shall cause each Local Government to enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Loan, all other plants, sites, works, properties and equipment of such Local Government to the extent relevant to the Project, and any relevant records and documents.

Section 2.11. (a) HnPG shall cause each Local Government to conduct at all times, its activities in accordance with sound administrative, financial, environmental and flood management practices, and under the supervision of competent and experienced management and personnel.

(b) HnPG shall cause each Local Government at all times to operate and maintain its plants, equipment and other property, and from time to time, promptly as

needed, make all necessary repairs and renewals thereof, all in accordance with sound administrative, financial, engineering, social, environmental, flood management, and maintenance and operational practices.

Section 2.12. Except as ADB may otherwise agree, HnPG shall not, and shall cause each Local Government not to sell, lease or otherwise dispose of any of its assets which may be required for the efficient carrying on of its operations or the disposal of which may prejudice its ability to perform satisfactorily any of its obligations under this Project Agreement.

Section 2.13. Except as ADB may otherwise agree, HnPG shall, and shall cause each Local Government 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 ensure that all goods and services financed out of such proceeds are used exclusively in the carrying out of the Project.

Section 2.14. Except as ADB may otherwise agree, HnPG shall cause each Local Government to duly perform all its obligations under the relevant Onlending Agreement, and not to 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 relevant Onlending Agreement.

Section 2.15. HnPG shall cause each Local Government to promptly notify ADB of any proposal to amend, suspend or repeal any provision of its charter and to afford ADB an adequate opportunity to comment on such proposal prior to taking any 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 shall come into force and effect. ADB shall promptly notify HnPG of such date.

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

ARTICLE IV

Miscellaneous

Section 4.01. Any notice or request required or permitted to be given or made under this Project Agreement and any agreement between the parties contemplated by this Project Agreement shall be in writing. Such notice or request shall be deemed to

have been duly given or made when it shall be delivered by hand or by mail, telegram, cable, telex, facsimile or radiogram to the party to which it is required or permitted to be given or made at its address hereinafter specified, or at such other address as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For ADB

Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2301.

For HnPG

Hunan Provincial Water Resources Department
Hunan Provincial Government
No. 370 Shaoshan Road
Changsha, Hunan
People's Republic of China

Facsimile Number:

(86-731) 554-1642

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 HnPG may be taken or executed by the Governor of Hunan Province, or by such other person or persons as the Governor shall so designate in writing notified to ADB.

(b) HnPG shall furnish to ADB sufficient evidence of the authority of each person who will act under paragraph (a) of this Section, together with the authenticated specimen signature of each such person.

Section 4.03. No delay in exercising, or omission to exercise, any right, power or remedy accruing to either party under this Project Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Project Agreement to be signed in their respective names and to be delivered at the principal office of ADB, as of the day and year first above written.

ASIAN DEVELOPMENT BANK

By _____

HUNAN PROVINCIAL GOVERNMENT

By _____
Authorized Representative

SCHEDULE

Subproject Selection Criteria; Execution of Project; Other Matters

I. PROJECT MANAGEMENT

Project Executing Agency

1. HnPG shall be the Project Executing Agency and as such shall be responsible for overall implementation of the Project.

Project Implementing Agencies

2. Each Local Government participating in the Project shall bear immediate responsibility for implementing its particular subproject/s.

Project Leading Group

3. The Project leading group established by HnPG to oversee Project preparation shall continue to meet semi-annually to oversee Project implementation. The Project leading group shall be headed by a Vice Governor of Hunan Province.

Provincial Project Management Office

4. The PPMO shall operate from the PWRD office in Changsha and shall have day-to-day responsibility for Project implementation and primary responsibility for coordinating and directing subproject implementation. The PPMO shall include representatives from the three main line agencies responsible for the Project – PDRC, PFD, and PWRD. Other agencies and institutes shall be represented as required. The PPMO shall also be responsible for directing Project preparatory activities, assisting the LPMOs to plan and manage their subproject works, setting up and managing finances, planning, managing and monitoring the resettlement and environmental management activities, and establishing project monitoring systems. The PPMO shall coordinate and manage reporting and communication with ADB.

Local Project Management Offices

5. Each participating Local Government shall set up a local project leading group and a LPMO to coordinate aspects of Project preparation and implementation in their respective jurisdictions.

II. SUBPROJECT SELECTION CRITERIA

6. To be eligible for financing under the Project, the feasibility study report (FSR) for each subproject shall include: (i) a flood risk and situation assessment, (ii) a technical analysis and description, (iii) subproject rationale, (iv) scope and components, (v) cost estimates and financing plan, (vi) implementation arrangements, (vii) financial and economic analysis, and (viii) a social and poverty impact assessment. Based on the relevant FSR, HnPG through the PPMO shall select each subproject according to the following criteria:

- (a) the subproject is a priority investment in the Hunan Provincial 11th Five-Year Plan (2006 – 2010) and conforms to one of four River Basin Flood Control plans – namely the Lishui, Xiangjiang, Yuanjiang, and Zishui;
- (b) the subproject flood risk analysis is based on the Borrower's requirements for hydrological and hydraulic survey data for estimating flood flow and impact, and structural designs meet the Borrower's technical requirements;
- (c) the structural subproject is designed to minimize cost with a combination of structural and non-structural measures for optimal flood management;
- (d) the subproject's social and poverty impact assessment assesses that the proposed flood protection measures will have a net positive impact on stakeholders' social welfare, have poverty reducing effects, and can be monitored;
- (e) the subproject is designed to minimize social impacts and ensures that people adversely affected by civil works under the Project are compensated in compliance with the Borrower's laws and ADB's *Involuntary Resettlement Policy (1995)*; land acquisition, resettlement processes and compensation procedures follow the Borrower's laws and regulations, due consultation and process is carried out in line with resettlement plans agreed with ADB and disclosed to affected persons; and the relevant Local Government has submitted written confirmation to HnPG and ADB that all households to be moved as a result of the subproject are agreeable to resettlement terms and conditions;
- (f) the subproject initial environmental examination (IEE), assesses that the environmental impact during construction can be managed to minimize effects in line with the Borrower's laws and regulations and ADB's *Environment Policy (2002)*; due environment related consultation and process in line with environmental management plans are undertaken, documented and agreed among stakeholders; defined mitigation measures can be taken to mitigate environmental impacts during construction in line with the Borrower's laws and ADB environment safeguard policies; mitigation measures during construction will follow the Borrower's laws and regulations, are incorporated in civil works contracts or as part of the local government responsibilities; and the subproject is designed to minimize detrimental environmental impact as a result of cumulative downstream flood effects from improved structural works;
- (g) the Local Government managing the subproject is assessed by HnPG to have the necessary staffing and implementation and financial management capacity, including internal audit, or can provide specific assurances that shortcomings can be rectified, such as additional qualified staff or in-service training in a timely way;

- (h) the subproject's implementation timeframe is reasonable and surveys and design can be prepared, due review, and safeguard processes and procedures followed, and implemented within the Project period (2006 to 2012);
- (i) the subproject cost is affordable by the borrowing Local Government, and the Local Government provides commitment to the investment through provision of budgetary resources to meet counterpart funding requirements for capital expenditures during the construction phase, resettlement costs, environmental management costs, loan repayment, and routine operations and maintenance;
- (j) local communities and beneficiaries demonstrate commitment to the investment through willingness to contribute, in cash or kind, to the cost of development as appropriate; and
- (k) subproject economic rate of return exceeds 12% in line with the Borrower's requirements for subproject economic internal rate of return (EIRR) calculation, with calculations following ADB's *Guidelines on Economic Analysis of Projects*.

III. SUBPROJECT EVALUATION AND APPROVAL

7. HnPG through the PPMO shall arrange for the preparation of the FSRs for the 27 non-core subproject through a qualified design institute in line with the standards set in the 8 core subproject FSRs, hold required public consultations, revise, and obtain approval of the relevant Local Government prior to submission to PDRC for appraisal and approval.

8. PDRC in consultation with PWRD, PFD, the Hunan Environment Protection Bureau and relevant line agencies shall review and appraise the 27 non-core subprojects and ensure that the subproject selection criteria agreed with ADB are followed.

9. HnPG through the PPMO shall ensure all PRC domestic requirements arising from each FSR are met in a timely way, including PRC required approvals for land acquisition, environmental assessment, and technical assessments.

10. HnPG shall submit all non-core subproject feasibility study reports (FSRs) to ADB for review in accordance with subproject selection criteria, and for approval on a no-objection basis. Non-core subproject FSRs shall be submitted in line with proposed annual work plans and six weeks in advance of contract bidding. ADB's final approval of the financing of each sub-project shall be subject to post-facto review and confirmation that implementation is in accordance with the sector plan, subproject selection criteria and all relevant ADB policies. The approved resettlement framework (RF), ethnic minority development framework (EMDF) and the environmental assessment and management framework (EAMF) shall provide the basis for preparing non-core subproject RPs, ethnic minority development plans (EMDPs), and IEEs. HnPG shall submit to ADB for approval prior to commencement of land acquisition all RPs and EMDPs. HnPG shall submit all subproject IEEs to ADB for review at least six weeks in advance of contract award for approval by ADB on a no-objection basis.

IV. SOCIAL SAFEGUARDS

11. HnPG through the PPMO and the LPMOs shall ensure that (a) the RF and all RPs are implemented in accordance with their terms, (b) all land and rights-of-way required by the Project are made available in a timely manner, (c) provisions of the RPs, including compensation and entitlements for affected persons (APs), are implemented in accordance with all applicable government laws and regulations and ADB's *Policy on Involuntary Resettlement* (1995), (d) compensation and resettlement assistance are given to the APs prior to dispossession and displacement, (e) counterpart funds for land acquisition and resettlement activities are provided in a timely manner, (f) any obligations in excess of the RP budget estimates are met, and (g) the APs will be at least as well off as they would have been in the absence of the Project.

12. HnPG through the PPMO shall ensure that the RPs prepared for the core subprojects in the event of significant changes arising from detailed designs are updated, disclosed to the APs and resubmitted to ADB for concurrence.

13. HnPG through the PPMO shall (a) ensure that RPs prepared for the non-core subprojects are based on the RF and detailed design, and are submitted to ADB for approval; and (b) advise ADB and reflect any significant material changes in Project scope in an updated RP and submit to ADB for approval. With respect to any updated RPs, HnPG shall disclose such updated RPs to affected persons prior to ADB approval.

14. HnPG through the PPMO and the LPMOs shall ensure that (a) adequate staff and resources are committed to supervising and monitoring the implementation of the RPs and providing quarterly reports on such implementation to ADB, (b) an independent agency acceptable to ADB is engaged by the PPMO to carry out monitoring and evaluation, and to forward reports to ADB semi-annually during resettlement implementation and annually for two years thereafter, and (c) summaries of annual audits of resettlement disbursements and expenditures under each RP are provided to ADB.

15. HnPG through the PPMO shall (i) ensure that civil works contractor specifications include requirements to comply with the RPs and entitlements for permanent and temporary impacts to APs, and (ii) supervise contractors to ensure compliance with requirements of the RPs, applicable laws and regulations, and ADB's *Policy on Involuntary Resettlement*.

16. HnPG through the PPMO and the LPMOs shall ensure that (a) the EMDF and EMDPs are implemented in accordance with their terms; (b) EMDPs are prepared for relevant subprojects in accordance with the EMDF and ADB's *Policy on Indigenous Peoples* (1998); (c) EMDPs are disclosed to affected persons, and reviewed and endorsed by the LPMOs; (d) ethnic minorities in the Project areas are consulted and provided with an opportunity to participate in the implementation of the EMDPs; (e) sufficient budget for implementation and monitoring of each EMDP is made available in a timely manner, and any obligations in excess of the EMDP budget estimates are met; (f) any significant changes to any EMDP are submitted to ADB for approval; (g) an independent agency acceptable to ADB is engaged by the PPMO to carry out regular monitoring and evaluation of the implementation of the EMDPs and to report annually to ADB; and (h) the targeted ethnic minorities will benefit from the Project and will be at least as well off as they would have been in the absence of the Project.

V. ENVIRONMENT MANAGEMENT

17. HnPG through the PPMO shall ensure that with regard to all non-core subprojects: (a) subproject IEEs are prepared; (b) each IEE meets the requirements of relevant PRC laws and regulations, ADB's *Environment Policy (2002)*, the EAMF, and the model IEEs developed for the core subprojects; (c) each IEE indicates that the concerned subproject will not result in significant long term negative environmental impacts; and (d) each IEE includes a costed subproject environmental management plan (EMP) and defined mitigation measures in line with the Borrower's laws and ADB's *Environment Policy* that will be implemented to mitigate environmental impacts during construction and operation.

18. HnPG through the PPMO shall ensure that (a) mitigation measures follow PRC laws and regulations; (b) requirements for mitigation implementation are incorporated into all subproject construction contracts; and (c) subproject design minimizes detrimental environmental impact as a result of cumulative downstream flood effects from improved structural works.

19. HnPG through the PPMO shall ensure that construction works do not take place in any areas of special environmental significance, including wetlands, areas of habitat for rare and endangered flora and fauna, and protected areas or nature reserves.

20. HnPG through the PPMO shall ensure that (a) environmental management practices of the contractors are supervised and monitored during construction as described in the EAMF and the consolidated environment management plan (CEMP) for the Project; (b) air, water and noise monitoring is undertaken as described in the ambient monitoring program in the EAMF and the CEMP; (c) performance of the contractors in regard to environmental protection is reported in the Project progress reports; and (d) environmental performance of each subproject and the entire Project is evaluated and reported as part of the Project performance monitoring and evaluation reports.

VI. FINANCIAL MANAGEMENT

21. HnPG shall ensure that PFD establishes and is responsible for an imprest account for the Project. The imprest account and other permissible methods shall be operated and maintained in accordance with ADB's *Loan Disbursement Handbook (January 2001)*.

22. HnPG shall ensure that the PPMO and PFD prepare and distribute before Project start-up a model project financial management manual detailing guidelines on internal controls, accounting procedures, withdrawal application procedures, and job descriptions for financial staff.

23. HnPG shall ensure that adequate numbers of qualified and trained project accounting staff are placed at all levels where accounting and financial management work will be performed. The PPMO and PFD shall provide training on ADB's procedures and requirements on disbursement, procurement and financial management before commencing project implementation.

24. HnPG shall ensure that the PPMO in conjunction with PFD monitors LPMO subproject accounts, payments and replenishment requirements, and shall coordinate loan funds disbursement and replenishment of the imprest account.

25. HnPG shall ensure that the LPMOs establish suitable financial management systems for their subprojects, issue requests to the PPMO for approval of expenditures, and provide the PPMO with quarterly progress reports.

26. HnPG shall ensure that the PPMO manages procurement activities, including preparing bidding documents, prequalification and tender evaluations.

VII. COUNTERPART FUNDING

27. HnPG shall ensure that the Local Governments apply for and provide adequate counterpart funds in a timely manner, and prepare and monitor annual plans and budgets needed for Project implementation.

28. HnPG shall ensure that, prior to completion of subprojects, the Local Governments conduct budget needs assessments for operation and maintenance and debt servicing.

VIII. PROJECT PERFORMANCE MONITORING AND EVALUATION

29. (a) HnPG shall ensure that the PPMO (a) establishes a project management and monitoring system, and (b) follows monitoring procedures for each subproject. The Project Monitoring shall be based on annual plans, and monitoring and reporting systems, including environmental management plans, and resettlement and ethnic minorities frameworks. The emphasis on the monitoring of implementation shall extend to the monitoring and mitigation of the risks identified in the Project design and monitoring framework (PDMF). The monitoring system shall be based on: the agreed PDMF; baseline information, depending on relevance and availability based on (a) existing data, or (b) the first measurement at the starting point; or a rolling baseline for subprojects where data is collected at subproject startup.

(b) The initial Project performance report (PPR) shall be prepared from the PDMF within one month of the Effective Date and updated periodically during Project review missions in consultation with HnPG or after receipt of Project progress reports. A Project completion report shall be prepared within three months of completion of the Project.

IX. PROJECT REVIEW

30. (a) Semi-annual reviews of the Project shall be undertaken by the PPMO and shall include reviews of: (i) the consolidated workplan for the year, (ii) key steps to be taken to ensure timely implementation, (iii) proposed loan and counterpart funds needs, and (iv) compliance with safeguard measures.

(b) A mid-term review of the Project shall be undertaken by the Borrower and HnPG in conjunction with ADB three years after Project implementation begins. The review will include a detailed evaluation of scope, implementation arrangements, environmental management, resettlement, achievement of scheduled targets, and progress with capacity building measures.

X. ANTI-CORRUPTION

31. During Project implementation, HnPG shall follow ADB's Anticorruption Policy, it being understood that ADB reserves the right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive or coercive practices relating to the Project. HnPG shall cause the PPMO to ensure that (a) periodic inspections on the contractor's 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) all contract financed by ADB in connection with the Project include provisions specifying the right of ADB to audit and examine the records and accounts of the PPMO and all contractors, suppliers, consultants and other service providers as they relate to the Project.