

CONFIRMED COPY

LOAN NUMBER 4197 CHA

Project Agreement

(Waigaoqiao Thermal Power Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT

and

SHANGHAI MUNICIPAL ELECTRIC POWER COMPANY

Dated June 12, 1998

LOAN NUMBER 4197 CHA

PROJECT AGREEMENT

AGREEMENT, dated June 12, 1998, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and SHANGHAI MUNICIPAL ELECTRIC POWER COMPANY (SMEPC).

WHEREAS (A) by the Loan Agreement of even date herewith between People's Republic of China (the Borrower) and the Bank, the Bank has agreed to make available to the Borrower an amount equal to four hundred million Dollars (\$400,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that SMEPC agree to undertake such obligations toward the Bank as are set forth in this Agreement; and

(B) by subsidiary loan agreements to be entered into between the Borrower and Shanghai Municipality and between Shanghai Municipality and SMEPC, the proceeds of the Loan provided for under the Loan Agreement will be made available to SMEPC through Shanghai Municipality on terms and conditions set forth in said Subsidiary Loan Agreements; and

WHEREAS SMEPC, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

## Definitions

Section 1.01. Unless the context otherwise requires, the several terms defined in the Loan Agreement and in the General Conditions (as so defined) have the respective meanings therein set forth.

## ARTICLE II

### Execution of the Project

Section 2.01. (a) SMEPC declares its commitment to the objectives of the Project as set forth in Schedule 2 to the Loan Agreement, and, to this end, shall carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering, environmental, resettlement, technical, and public utility practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Bank and SMEPC shall otherwise agree, SMEPC shall carry out the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement. Section 2.02. Except as the Bank shall otherwise agree, procurement of the goods and consultants' services required for the Project and to be financed out of the proceeds of the Loan shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. (a) SMEPC shall carry out the obligations set forth in Sections 9.04, 9.05, 9.06, 9.07, 9.08 and 9.09 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition) in respect of the Project Agreement.

(b) For the purposes of Section 9.08 of the General Conditions and without limitation thereto, SMEPC shall: (i) prepare, on the basis of guidelines acceptable to the Bank, and furnish to the Bank not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Bank and SMEPC a plan for the future operation of the Project; and (ii) afford the Bank a reasonable opportunity to exchange views with SMEPC on said plan.

Section 2.04. SMEPC shall duly perform all its obligations under the Subsidiary Loan Agreement. Except as the Bank shall otherwise agree, SMEPC shall not take or concur in any action which would have the effect of assigning, amending, abrogating or waiving the Subsidiary Loan Agreement or any provision thereof.

Section 2.05. (a) SMEPC shall, at the request of the Bank, exchange views with the Bank with regard to the progress of the Project, the performance of its obligations under this Agreement and under the Subsidiary Loan Agreement, and other matters relating to the purposes of the Loan.

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

## ARTICLE III

### Management and Operations of SMEPC

Section 3.01. SMEPC shall carry on its operations and conduct its affairs in accordance with sound administrative, financial, engineering, environmental, technical and public utility practices under the supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. SMEPC shall at all times operate and maintain its plant, machinery, equipment and other property, and from time to time, promptly as needed, make all necessary repairs and renewals thereof, all in accordance with sound engineering, financial, environmental technical and public utility practices.

Section 3.03. SMEPC shall take out and maintain with responsible insurers, or make other provision satisfactory to the Bank for, insurance against such risks and in such amounts as shall be consistent with appropriate practice.

#### ARTICLE IV

##### Financial Covenants

Section 4.01. (a) SMEPC shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition.

(b) SMEPC shall:

(i) have its records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;

(ii) furnish to the Bank, as soon as available but in any case not later than six (6) months after the end of each such year, (A) certified copies of its financial statements for such year as so audited and (B) the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and

(iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audit thereof as the Bank shall from time to time reasonably request.

Section 4.02. (a) Except as the Bank shall otherwise agree, SMEPC shall earn:

(i) for its fiscal years ending on December 31, 1998 and December 31, 1999, an annual return of not less than 8% of the average current value of SMEPC's equity;

(ii) or its fiscal years ending on December 31, 2000 and December 31, 2001, an annual return of not less than 10% of the average current value of its equity;

(iii) for its fiscal years ending on December 31, 2002 and December 31, 2003, an annual return of not less than 12% of the average current value of its equity; and

(iv) for its fiscal year ending on December 31, 2004, and for each of its fiscal years thereafter, an annual return of not less than 15% of the average current value of its equity.

(b) Before June 1 in each of its fiscal years, SMEPC shall, on the basis of forecasts prepared by SMEPC and satisfactory to the Bank, review whether it would meet the requirements set forth in paragraph (a) in respect of such year and the next following fiscal year and shall furnish to the Bank the results of such review upon its completion.

(c) If any such review shows that SMEPC would not meet the requirements set forth in paragraph (a) of this Section for SMEPC's fiscal years covered by such review, SMEPC shall promptly take all necessary measures (including, without limitation, adjustments of the structure or levels of its tariffs) in order to meet such requirements.

(d) For the purposes of this Section:

(i) The annual return shall be calculated by dividing SMEPC's net income for the fiscal year in question by one half of the sum of the current book value of SMEPC's equity at the beginning and at the end of that fiscal year.

(ii) The term "equity" means the sum of the total unimpaired paid-in

capital, retained earnings and reserves of SMEPC not allocated  
to cover specific liabilities excluding consumer contributions.

(iii) The term "net income" means the sum of total operating revenues and net non-operating income less the sum of total operating expenses and interest payments and other charges on debt.

(iv) The term "total operating revenues" means revenues from all sources related to operations.

(v) The term "net non-operating income" means the difference between:  
(A) revenues from all sources other than those related to operations; and  
(B) expenses, including taxes and payments in lieu of taxes, incurred in the generation of revenues in (A) above.

(vi) The term "total operating expenses" means all expenses related to operations, including administration, adequate maintenance, taxes and payments in lieu of taxes, and provision for depreciation on a straight-line basis at a rate of not less than 5% per annum of the average current gross value of SMEPC's fixed assets in operation, or other basis acceptable to the Bank, but excluding interest and other charges on debt.

Section 4.03. (a) Except as the Bank shall otherwise agree, SMEPC shall take all necessary measures, including, without limitation, adjustments of the structure or the levels of its tariffs, to ensure that its internal cash generation for each fiscal year during the term of any debt to be incurred shall be at least 1.5 times its estimated maximum debt service requirements in such year on all debt of SMEPC, including the debt to be incurred.

(b) For the purposes of this Section:

(i) The term "debt" means any indebtedness of SMEPC maturing by its terms more than one year after the date on which it is originally incurred.

(ii) Debt shall be deemed to be incurred: (A) under a loan contract or agreement or other instrument providing for such debt or for the modification of its terms of payment on the date of such contract, agreement or instrument; and (B) under a guarantee agreement, on the date the agreement providing for such guarantee has been entered into.

(iii) The term "internal cash generation" means the difference between:  
(A) the sum of revenues from all sources related to operations and net non-operating income, excluding receipts from customer connection charges; and (B) the sum of all expenses related to operations including administration, adequate maintenance, taxes and payments in lieu of taxes, but excluding provision for depreciation, other non-cash operating charges and interest and other charges on debt.

(iv) The term "net non-operating income" means the difference between:  
(A) revenues from all sources other than those related to operations; and (B) expenses, including rates and payments in lieu of taxes, incurred in the generation of revenues in (A) above.

(v) The term "debt service requirements" means the aggregate amount of repayments (including sinking fund payments, if any) of, and interest and other charges on, debt, excluding capitalized interest during construction.

(vi) Whenever for the purposes of this Section it shall be necessary to value, in terms of the currency of the Borrower, debt payable in another currency, such valuation shall be made on the basis of the prevailing lawful rate of exchange at which such other currency is, at the time of such valuation, obtainable for the purposes of servicing

such debt, or, in the absence of such rate, on the basis of a rate of exchange acceptable to the Bank.

#### ARTICLE V

##### Effective Date; Termination Cancellation and Suspension

Section 5.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 5.02. This Agreement and all obligations of the Bank and of SMEPC thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify SMEPC thereof.

Section 5.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

#### ARTICLE VI

##### Miscellaneous Provisions

Section 6.01. Any notice or request required or permitted to be given or made under this Agreement and any agreement between the parties contemplated by this 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 or radiogram to the party to which it is required or permitted to be given or made at such party's address hereinafter specified or at such other addresses as such party shall have designated by notice to the party giving such notice or making such request. The addresses so specified are:

For the Bank:

International Bank for Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:

Telex:

INTBAFRAD  
Washington, D.C.

248423 (MCI),  
64145 (MCI)

For Shanghai Municipal Electric Power Company:

181 Nanjing Road (East)  
Shanghai 200002  
People's Republic of China

Section 6.02. Any action required or permitted to be taken, and any documents required or permitted to be executed, under this Agreement on behalf of SMEPC or by SMEPC on behalf of the Borrower under the Loan Agreement, may be taken or executed by its President, or by such other person or persons as said President shall designate in writing, and SMEPC shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 6.03. This Agreement may be executed in several counterparts, each of which shall be an original, and all collectively but one instrument.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ Sven Sandstrom  
Authorized Representative

SHANGHAI MUNICIPAL ELECTRIC  
POWER COMPANY

By /s/ Li Zhaoxing  
Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I. Procurement of Goods

Part A: General

Goods shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 and revised in January and August 1996 (the Guidelines) and the following provisions of this Section, as applicable.

Part B: International Competitive Bidding

1. Except as otherwise provided in Part C of this Section, goods shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto.

2. The following provisions shall apply to goods to be procured under contracts awarded in accordance with the provisions of paragraph 1 of this Part B:

(a) Preference for domestically manufactured goods

The provisions of paragraphs 2.54 and 2.55 of the Guidelines and Appendix 2 thereto shall apply to goods manufactured in the territory of the Borrower.

(b) Notification and Advertising

The invitation to prequalify or bid for each contract estimated to cost \$10,000,000 equivalent or more shall be advertised in accordance with the procedures applicable to large contracts under paragraph 2.8 of the Guidelines.

Part C: Other Procurement Procedures

1. Limited International Bidding

Specialized equipment estimated to cost less than \$300,000 equivalent per contract, up to an aggregate amount not to exceed \$6,000,000 equivalent, and other goods, which the Bank agrees can only be purchased from a limited number of suppliers, regardless of the cost thereof, may be procured under contracts awarded in accordance with the provisions of paragraph 3.2 of the Guidelines.

2. International and National Shopping

Goods which are readily available off-the-shelf or are standard specification commodities and which are estimated to cost less than \$300,000 equivalent per contract, up to an aggregate amount not to exceed \$2,500,000 equivalent, may be procured under contracts awarded on the basis of: (a) international shopping procedures for up to an aggregate amount not to exceed \$2,000,000 equivalent, or (b)

with the prior agreement of the Bank, national shopping procedures, for an aggregate amount not to exceed \$500,000 equivalent, in each case in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

3. Direct Contracting

Goods which (a) should be procured as an extension of an existing contract or must be purchased from the original supplier to be compatible with existing equipment, and which cost \$500,000 equivalent or less in the aggregate, or (b) are of a proprietary nature, may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraph 3.7 of the Guidelines.

Part D: Review by the Bank of Procurement Decisions

1. Procurement Planning

Prior to the issuance of any invitations to prequalify for bidding or to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Bank for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Guidelines. Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Bank, and with the provisions of said paragraph 1.

2. Prior Review

With respect to each contract for goods estimated to cost the equivalent of \$5,000,000 or more, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

3. Post Review

With respect to each contract not governed by paragraph 2 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

Section II. Employment of Consultants

Part A: General

Consultants' services shall be procured in accordance with the provisions of the Introduction and Section IV of the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997 (the Consultant Guidelines) and the following provisions of Section II of this Schedule.

Part B: Quality- and Cost-based Selection

Except as otherwise provided in Part C of this Section, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Consultant Guidelines, paragraph 3 of Appendix 1 thereto, Appendix 2 thereto, and the provisions of paragraphs 3.13 through 3.18 thereof applicable to quality- and cost-based selection of consultants.

Part C: Other Procedures for the Selection of Consultants

Single Source Selection

Services for construction management may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraphs 3.8 through 3.11 of the Consultant Guidelines.

Part D: Review by the Bank of the Selection of Consultants

1. Selection Planning

Prior to the issuance to consultants of any requests for proposals, the proposed plan for the selection of consultants under the Project shall be furnished to the Bank for its review and approval, in accordance with the provisions of paragraph 1 of Appendix 1 to the Consultant Guidelines. Selection of all consultants' services shall

be undertaken in accordance with such selection plan as shall have been approved by the Bank, and the provisions of said paragraph 1.

2. Prior Review

(a) With respect to each contract estimated to cost the equivalent of \$100,000 or more, but less than the equivalent of \$200,000, the procedures set forth in paragraphs 1, 2 (other than the second subparagraph of paragraph 2(a)) and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(b) With respect to each contract estimated to cost the equivalent of \$200,000 or more, the procedures set forth in paragraphs 1, 2 (other than the third subparagraph of paragraph 2(a)) and 5 of Appendix 1 to the Consultant Guidelines shall apply.

(c) With respect to each contract for the employment of individual consultants estimated to cost the equivalent of \$50,000 or more, the qualifications, experience, terms of reference and terms of employment of the consultants shall be furnished to the Bank for its prior review and approval. The contract shall be awarded only after said approval shall have been given.

3. Post Review

With respect to each contract not governed by paragraph 1 of this Part, the procedures set forth in paragraph 4 of Appendix 1 to the Guidelines shall apply.

SCHEDULE 2

Implementation Program

For the purposes of Section 2.01(b) of this Agreement, the Implementation Program shall consist of the following:

A. Project Management

In order to ensure the proper carrying out of the Project, SMEPC shall continue to make available competent staff (including environmental staff organized in an environmental management unit) in adequate numbers and with terms of reference satisfactory to the Bank, to be responsible for the overall coordination and supervision of project implementation, the supervision of procurement of goods and services thereunder, the overall assessment of quality and impact of the Project, and the preparation and furnishing to the Bank of reports and other information thereon.

B. Project Implementation

1. Part D of the Project: Institutional Development

SMEPC shall carry out Part D of the Project in accordance with the Management Development and Training Plan. Without limitation upon the foregoing, SMEPC shall: (i) employ consultants in accordance with the provisions of Section II of Schedule 1 to this Agreement not later than December 31, 1998 to assist SMEPC in the development of suitable accounting and financial management systems under Part D of the Project; (ii) ensure that said study and the proposal for said systems shall be completed and furnished to the Bank not later than December 31, 2000; (iii) afford the Bank a reasonable opportunity to exchange views with SMEPC on said study and the proposal for said systems, and thereafter, but in any event not later than June 30, 2001 carry out the recommendations of said study and install the said systems, taking into account the views of the Bank on the matter; and (iv) carry out the Management Development and Training Program.

2. Part E of the Project: SMEPC Restructuring Plan

SMEPC shall: (a) employ consultants under Section II of Schedule 1 to this Agreement not later than December 31, 1997 to assist SMEPC in the implementation of the SMEPC Restructuring Plan; and (b) afford the Bank an opportunity to exchange views with SMEPC periodically and at least annually on SMEPC's progress therein.



3. Part F of the Project: Resettlement

(a) SMEPC shall: (i) ensure that Part A of the Project is implemented in accordance with the Resettlement Action Plan, acceptable to the Bank, in a manner satisfactory to the Bank; and (ii) shall prepare and furnish to the Borrower and the Bank an evaluation report promptly upon completion of the resettlement and rehabilitation of Affected Persons as described in the Resettlement Action Plan.

(b) If and to the extent that there are any persons who are involuntarily displaced or whose rights to land or other assets are compulsorily acquired as a result of SMEPC's implementation of Part C of the Project, SMEPC shall: (i) prepare, in accordance with terms of reference acceptable to the Bank and in consultation with such affected persons, based on the policies, planning principles and institutional arrangements set forth in the Resettlement Action Plan, and shall furnish to the Bank for approval, a detailed resettlement action plan acceptable to the Bank for carrying out the compensation, resettlement or rehabilitation of such affected persons; and (ii) ensure that Part C of the Project is implemented in accordance with such plan, in a manner satisfactory to the Bank, and that all such persons shall be compensated, resettled and rehabilitated in accordance with such plan.

(c) SMEPC shall prepare in accordance with terms of reference acceptable to the Bank and in consultation with the affected persons based on the policies, planning principles and institutional arrangements set forth in the Resettlement Action Plan, and shall furnish to the Bank by January 31, 1998, a resettlement implementation plan for carrying out the compensation, resettlement or rehabilitation of all persons who are involuntarily resettled or whose rights to land or other assets are compulsorily acquired in connection with the construction of the Yanghang substation in Shanghai Municipality.

(d) SMEPC shall not start construction of the Yanghang substation in Shanghai Municipality until the resettlement implementation plan referred to in paragraph (c) above, acceptable to the Bank, has been furnished to the Bank in accordance with Paragraph 3(c) of Part B of this Schedule 2.

(e) SMEPC shall ensure that the land acquisition for and construction of the Yanghang substation in Shanghai Municipality is carried out in accordance with the resettlement implementation plan referred to in paragraph (c) above, in a manner satisfactory to the Bank, and that all people who are involuntarily displaced or whose rights to land or other assets are compulsorily acquired in connection therewith, shall be compensated, resettled and rehabilitated in accordance with such plan.

4. Part G of the Project: Environmental Management

SMEPC shall implement the Environmental Management Plan in accordance with a time bound action plan acceptable to the Bank.

C. Project Monitoring and Reporting

SMEPC shall:

1. maintain or cause to be maintained policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with the indicators satisfactory to the Bank, (a) the carrying out of the Project, including the Resettlement Action Plan and the action plans referred to in Paragraphs 1, 2 and 4 of Part B of this Schedule, and (b) the achievement of the objectives of the Project;

2. prepare, under terms of reference acceptable to the Bank, and furnish to the Bank semi-annual reports on or about April 30 and October 31 in each year, integrating the results of the monitoring and evaluation activities performed pursuant to Paragraph 1 above on the progress achieved in the carrying out the Project, including the Resettlement Action Plan and the action plans referred to in Paragraphs 1, 2 and 4 of Part B of this Schedule, during the preceding calendar year together with any revisions proposed to be made in the Resettlement Action Plan or in said action plans in order to achieve the objectives thereof and any measures proposed to further the objectives of the Project;

3. review with the Bank each report furnished to the Bank pursuant to Paragraph 2

above hereof, and promptly introduce such revisions into the Resettlement Action Plan and the action plans referred to in Paragraph 1 above as shall have been approved by the Bank, and take such measures to further the objectives of the Project as shall have been agreed with the Bank;

4. prepare, under terms of reference satisfactory to the Bank, and furnish to the Bank on or about December 31, 2001, a report integrating the results of the monitoring and evaluation activities performed pursuant to Paragraph 1 above on the progress achieved in the carrying out of the Project during the period since its inception, and setting out the measures recommended to ensure the efficient carrying out of the Project and the achievement of the objectives thereof during the period following such date; and

5. review with the Bank, by March 31, 2002, or such later date as the Bank shall request, the report referred to in Paragraph 4 above, and, thereafter, take all measures required to ensure the efficient completion of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said report and the Bank's views on the matter.

