

CONFORMED COPY

LOAN NUMBER 3718 CHA

Project Agreement

(Yangzhou Thermal Power Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

JIANGSU PROVINCIAL ELECTRIC POWER COMPANY

Dated September 16, 1994

LOAN NUMBER 3718 CHA

PROJECT AGREEMENT

AGREEMENT, dated September 16, 1994, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and JIANGSU PROVINCIAL ELECTRIC POWER COMPANY (JPEPC).

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 in various currencies equivalent to three hundred and fifty million dollars (\$350,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that JPEPC agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by a Subsidiary Loan Agreement to be entered into between the Borrower and JPEPC, the proceeds of the loan provided for under the Loan Agreement will be lent to JPEPC on the terms and conditions set forth in said Subsidiary Loan Agreement; and

WHEREAS JPEPC, 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 the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. JPEPC 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, and environmental practices, and shall provide, or cause to be provided, promptly as needed, the funds, facilities, services and other resources required for the Project.

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 the Schedule to this Agreement.

Section 2.03. JPEPC 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, respectively) in respect of the Project Agreement and the Project.

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

Section 2.05. (a) JPEPC 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) JPEPC 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 JPEPC of its obligations under this Agreement and under the Subsidiary Loan Agreement.

Section 2.06. JPEPC shall, by December 31, 1994, engage management consultants to assist in the development and implementation of improved accounting and financial management information systems, in accordance with Section II of the Schedule to this Agreement and under terms of reference agreed to by the Bank.

Section 2.07. JPEPC shall carry out the management development and training program, agreed to by the Borrower and the Bank, in a manner satisfactory to the Bank.

Section 2.08. JPEPC shall carry out the environmental management program, agreed to by the Borrower and the Bank, in a manner satisfactory to the Bank.

Section 2.09. JPEPC shall carry out land acquisition and the resettlement and rehabilitation program, agreed to by the Borrower and the Bank, in a manner satisfactory to the Bank.

ARTICLE III

Management and Operations of JPEPC

Section 3.01. JPEPC shall carry on its operations and conduct its affairs in accordance with sound administrative, financial and engineering practices under the

supervision of qualified and experienced management assisted by competent staff in adequate numbers.

Section 3.02. JPEPC 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 and environmental practices.

Section 3.03. JPEPC 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) JPEPC shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations, resources and expenditures in respect of the Project.

(b) JPEPC shall:

(i) have the records and accounts referred to in paragraph (a) of this Section, 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 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, JPEPC shall not incur any debt unless a reasonable forecast of the revenues and expenditures of JPEPC shows that the projected internal cash generation of JPEPC for each fiscal year during the term of the debt to be incurred shall be at least 1.5 times the estimated debt service requirements of JPEPC in such year on all its debt including the debt to be incurred.

(b) For the purposes of this Section:

(i) The term "debt" means any indebtedness of JPEPC 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 of JPEPC" means the difference between:

(A) the sum of revenues from all sources related to operations and net non-operating income, excluding receipts for consumer connection charges; and

(B) the sum of all expenses related to operations including administration, provision of maintenance special fund, and sales and income taxes and payments in lieu of such taxes,

but excluding provision for depreciation, 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 taxes 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) The term "reasonable forecast" means a forecast prepared by JPEPC not earlier than twelve months prior to the incurrence of the debt in question, which both the Bank and JPEPC accept as reasonable and as to which the Bank has notified JPEPC of its acceptability, provided that no event has occurred since such notification which has, or may reasonably be expected in the future to have, a material adverse effect on the financial condition or future operating results of JPEPC.
- (vii) 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.

Section 4.03. (a) Except as the Bank shall otherwise agree, JPEPC shall from time to time take, or cause to be taken, all such measures (including, without limitation, adjustments of the levels and structure of its electricity tariffs as determined by the Borrower) as shall be required to produce, for each of its fiscal years after its fiscal year ending on December 31, 1994, net cash surplus equivalent to not less than 30 percent of its average annual investment program.

- (b) For the purposes of this Section:
- (i) The term "net cash surplus" means total operating income minus the sum of: (A) cash operating expenses; and (B) financial obligations;
- (ii) The term "total operating income" means the sum of revenues from all sources related to operations and net non-operating income;
- (iii) The term "cash operating expenses" means the sum of expenses related to operations, including maintenance and administration but excluding depreciation; and
- (iv) The term "financial obligations" means interest and other charges on debt (excluding interest during construction), repayment of loans (including sinking fund payments, if any), all taxes or payments in lieu of taxes; allocations to special funds and other cash distributions of surplus funds (including mandatory transfers to the Borrower), and any other cash outflows (other than capital expenditures) related to operations.

Section 4.04. JPEPC shall, by April 30 of each year commencing in 1995, prepare and furnish annually to the Bank for review, until completion of the Project, a rolling long-term financial plan (including projected income statements, sources and uses of funds and balance sheets covering a period of no less than eight years) and exchange views with the Bank on its financial position, focusing on comparison of actual financial performance with agreed targets, operating cost trend, future investment and related financing arrangements.

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 JPEPC thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify JPEPC 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 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 the Bank:

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

Cable address:

INTBAFRAD
Washington, D.C.

Telex:

248423 (RCA),
82987 (FTCC),
64145 (WUI) or
197688 (TRT)

For JPEPC:

20 (W) Beijing Road
Nanjing 210024
People's Republic of China

Cable address:

2382
China

Telex:

34082 JPEPB CN

Section 6.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of JPEPC, or by JPEPC on behalf of the Borrower under the Loan Agreement, may be taken or executed by its General Manager or such other person or persons as its General Manager shall designate in writing, and JPEPC 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/ Nicholas Hope

Acting Regional Vice President
East Asia and Pacific

JIANGSU PROVINCIAL ELECTRIC POWER
COMPANY

By /s/ Yang Jiechi

Authorized Representative

SCHEDULE

Procurement and Consultants' Services

Section I. Procurement of Goods

Part A: International Competitive Bidding

Except as provided in Part C hereof, goods shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1992 (the Guidelines).

(a) For fixed-price contracts, the invitation to bid referred to in paragraph 2.13 of the Guidelines shall provide that, when contract award is delayed beyond the original bid validity period, the successful bidder's bid price will be increased for each week of delay by two predisclosed correction factors acceptable to the Bank, one to be applied to all foreign currency components and the other to the local currency component of the bid price. Such an increase shall not be taken into account in the bid evaluation.

(b) In the procurement of goods in accordance with this Part A, the Borrower shall use the relevant standard bidding documents issued or agreed to by the Bank, with such modifications thereto as the Bank shall have agreed to be necessary for the purposes of the Project. Where no relevant standard bidding documents have been issued by the Bank, the Borrower shall use bidding documents based on other internationally recognized standard forms agreed with the Bank.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A hereof, goods manufactured in China may be granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Other Procurement Procedures

1. Except as provided in paragraphs 2 hereof, goods under Part A of the Project, estimated to cost less than the equivalent of \$300,000 per contract, up to an aggregate amount equivalent to \$6,000,000, may be procured under contracts awarded

through limited international bidding procedures on the basis of evaluation and comparison of bids obtained from at least three qualified suppliers eligible under the Guidelines and in accordance with procedures set forth in Sections I and II of the Guidelines (excluding paragraphs 2.8, 2.9, 2.55 and 2.56 thereof).

2. Goods, under Part A of the Project, estimated to cost less than the equivalent of \$300,000 per contract, up to an aggregate amount equivalent to \$3,000,000, may be procured under contracts awarded on the basis of comparison of price quotations obtained from at least three suppliers eligible under the Guidelines, in accordance with procedures acceptable to the Bank.

3. Contracts for equipment under Part B of the Project shall be awarded after direct negotiations with suppliers, in accordance with procedures acceptable to the Bank.

Part D: Review by the Bank of Procurement Decisions

1. Review of invitations to bid and of proposed awards and final contracts:

(a) 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 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Bank pursuant to said paragraph 2 (d) shall be furnished to the Bank prior to the making of the first payment out of the Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, said procedures shall be modified to ensure that the two conformed copies of the contract together with the other information required to be furnished to the Bank pursuant to said paragraph 3 shall be furnished to the Bank as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 4 to the Loan Agreement.

(c) The provisions of the preceding subparagraph (b) shall not apply to contracts on account of which withdrawals from the Loan Account are to be made on the basis of statements of expenditure.

2. The figure of 15% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II. Employment of Consultants

1. In order to assist JPEPC in carrying out the Project, JPEPC shall employ consultants whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Bank. Such consultants shall be selected in accordance with principles and procedures satisfactory to the Bank on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981 (the Consultant Guidelines).

2. Notwithstanding the provisions of paragraph 1 of this Section, the provisions of the Consultant Guidelines requiring prior Bank review or approval of budgets, short lists, selection procedures, letters of invitation, proposals, evaluation reports and contracts shall not apply to contracts estimated to cost less than \$100,000 equivalent each. However, this exception to prior Bank review shall not apply to the terms of reference for such contracts nor to the employment of individuals, to single source selection of firms, to assignments of a critical nature as reasonably determined by the Bank and to amendments of contracts raising the contract value to \$100,000 equivalent or above.