

CONFORMED COPY

LOAN NUMBER 4045 CHA

Financial Intermediaries
Project Agreement

(Chongqing Industrial Pollution
Control and Reform Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

AGRICULTURAL BANK OF CHINA

and

CHINA MERCHANTS BANK

and

EVERBRIGHT BANK OF CHINA

Dated December 4, 1996

LOAN NUMBER 4045 CHA

FINANCIAL INTERMEDIARIES PROJECT AGREEMENT

AGREEMENT, dated December 4, 1996, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and AGRICULTURAL BANK OF CHINA, CHINA MERCHANTS BANK and EVERBRIGHT BANK OF CHINA (the Financial Intermediaries).

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 one hundred seventy million dollars (\$170,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that the Financial Intermediaries agree to undertake such obligations toward the Bank as are set forth in this Agreement;

(B) by subsidiary loan agreements to be entered into between Chongqing and the Financial Intermediaries (Financial Intermediary Subsidiary Loan Agreements), a portion of the proceeds of the Loan provided for under the Loan Agreement will be relent to the Financial Intermediaries on the terms and conditions set forth in the Financial Intermediary Subsidiary Loan Agreements; and

WHEREAS the Financial Intermediaries, in consideration of the Bank's entering into the Loan Agreement with the Borrower, have 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; Management and Operations of the Financial Intermediaries

Section 2.01. Each Financial Intermediary 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 its Respective Parts of the Project and conduct its operations and affairs in accordance with sound financial standards and practices, with qualified management and personnel, and in accordance with: (i) for ABC, the ABC Charter; (ii) for CMB, the CMB Charter; and (iii) for EBBC, the EBBC Charter.

Section 2.02. Each Financial Intermediary shall: (a) undertakes that, unless the Bank shall otherwise agree, Sub-loans shall be made in accordance with the procedures and on the terms and conditions set forth or referred to in Schedule 1 to this Agreement;

(b) exercise its rights in relation to each Investment Project in such manner as to:

(i) protect the interests of the Bank and of such Financial Intermediary;

(ii) comply with its obligations under this Agreement and its respective Subsidiary Loan Agreement; and

(iii) achieve the purposes of the Project; and

(c) appraise Investment Projects and supervise, monitor and report on the carrying out by Investment Enterprises of Investment Projects, in accordance with procedures acceptable to the Bank.

Section 2.03. Each Financial Intermediary 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 Financial Intermediaries Project Agreement and its Respective Parts of the Project.

Section 2.04. Each Financial Intermediary shall duly perform all its obligations under its respective Subsidiary Loan Agreement. Except as the Bank shall otherwise agree, no Financial Intermediary shall take or concur in any action which would have the effect of amending, abrogating, assigning or waiving such Subsidiary Loan Agreement or any provision thereof.

Section 2.05. Each Financial Intermediary shall: (a) at the request of the Bank, exchange views with the Bank with regard to the progress of its Respective Part of the Project, the performance of its obligations under this Agreement and under its respective Subsidiary Loan Agreement, and other matters relating to the purposes of the Loan; and

(b) promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of its Respective Part of the Project, the

accomplishment of the purposes of the Loan, or the performance by such Financial Intermediary of its obligations under this Agreement and under its respective Subsidiary Loan Agreement.

Section 2.06. If any Financial Intermediary has, establishes or acquires any Subsidiary, such Financial Intermediary shall cause any such Subsidiary to which the obligations of such Financial Intermediary under this Agreement relate to observe and perform such obligations as though such obligations were binding upon such Subsidiary.

Section 2.07. Each Financial Intermediary shall: (a) not later than December 31, 1996, furnish to the Bank a time-bound training program acceptable to the Bank for the carrying out of Part D.2 of the Project by said Financial Intermediary; and

(b) thereafter implement such training program in accordance with its terms.

ARTICLE III

Financial Covenants

Section 3.01. Each Financial Intermediary shall: (a) maintain procedures and records adequate to monitor and record the progress of its Respective Parts of the Project and of each Investment Project for which it has made a Sub-loan (including its cost and the benefits to be derived from it) and to reflect in accordance with consistently maintained sound accounting practices the operations and financial condition of such Financial Intermediary.

(b) (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 months after the end of each such year:

(A) certified copies of its financial statements for such year audited; and

(B) the report of such audit by said auditors of such scope and 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 3.02. Each Financial Intermediary shall take such steps satisfactory to the Bank as shall be necessary to protect itself against risk of loss resulting from changes in the rates of exchange between the various currencies (including Renminbi) used in its operations.

ARTICLE IV

Effective Date; Termination; Cancellation and Suspension

Section 4.01. This Agreement shall come into force and effect on the date upon which the Loan Agreement becomes effective.

Section 4.02. This Agreement and all obligations of the Bank and of the Financial Intermediaries thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify each Financial Intermediary thereof.

Section 4.03. All the provisions of this Agreement shall continue in full force and effect notwithstanding any cancellation or suspension under the General Conditions.

ARTICLE V

Miscellaneous Provisions

Section 5.01. 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 (MCI); or
64145 (MCI)

For ABC:

Agricultural Bank of China
Chongqing Branch
103 Xing Hua Road
Chongqing
People's Republic of China 630011

Telex:

62286 ABCQ CN

For CMB:

China Merchants Bank
5/F, Shenfang Bld. No. 3, Huaqiang Beilu
Shenzhen
People's Republic of China

Telex:

420034 CMBHO CN; or
420035 CMBHO CN

For EBBC:

Everbright Bank of China
Chongqing Branch
No. 2 Linjiang Road, Yuzhong District
Chongqing
People's Republic of China 630010

Telex:

62423 EBCQ CN

Section 5.02. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement on behalf of a Financial Intermediary may be taken or executed by: for ABC and EBBC, their respective President; and for CMB, its General Manager; or such other person or persons as such

President or General Manager shall designate in writing, and each Financial Intermediary shall furnish to the Bank sufficient evidence of the authority and the authenticated specimen signature of each such person.

Section 5.03. 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/ Marianne Haug

Acting Regional Vice President
East Asia and Pacific

AGRICULTURAL BANK OF CHINA
CHINA MERCHANTS BANK
EVERBRIGHT BANK OF CHINA

By /s/ Li Daoyu

Authorized Representative

SCHEDULE 1

Procedures for and Terms and Conditions of Sub-loans

A. Principal Terms and Conditions of Sub-loans:

1. (a) Sub-loans shall be made to Investment Enterprises for Investment Projects concerning the restructuring of productive facilities and the cleaning up of pollution. The proceeds of the Sub-loans shall be used to procure goods and services required for the carrying out of the Investment Projects.

(b) The principal amount of each Sub-loan financed:

(i) shall be denominated and repaid in dollars, and be equal to the amount of the Loan withdrawn on account of the cost of goods and services required for the Subproject for which said Sub-loan has been made and to be financed out of the proceeds of the Loan; and

(ii) shall be repaid over a period not exceeding twelve (12) years, inclusive of a grace period not exceeding five (5) years.

(c) Each Sub-loan shall be charged interest on the principal amount thereof withdrawn and outstanding from time to time at a rate at least equal to the sum of: (i) the rate of interest applicable from time to time to the Loan pursuant to Section 2.05 of the Loan Agreement plus; (ii) 2%.

(d) Each Sub-loan shall be charged on the principal amount thereof not withdrawn from time to time a commitment charge at a rate equal to three-fourths of one percent (3/4 of 1%) per annum.

2. Each Sub-loan for an Investment Project shall be made only to an Investment Enterprise which shall have established to the satisfaction of the Financial Intermediary making said Sub-loan, on the basis of an appraisal carried out in accordance with guidelines satisfactory to the Bank, that:

(a) the Investment Enterprise has been established as a limited liability company or a limited liability shareholding company under the Company Law of the Borrower, or has been otherwise established as a legal entity in a manner satisfactory to the Bank;

(b) the Investment Enterprise has adopted accounting standards acceptable to the Bank and has had its financial statements of its fiscal year preceding the fiscal year in which it applied for a Sub-loan audited by independent auditors;

(c) the Investment Enterprise is creditworthy and has a sound financial position and prospects and will be in a position to service its debt under the Sub-loan;

(d) an environmental assessment of the Investment Project has been carried out by Chongqing's Environmental Protection Bureau, and the Investment Enterprise has, on the basis of such assessment, undertaken to carry out an environmental action plan to remedy any negative impact of the Investment Project on the environment, approved by the Chongqing environmental protection bureau;

(e) the proposed Investment Project is technically, commercially and financially viable, and is estimated to have a financial and economic rate of return of not less than 11%;

(f) the Investment Enterprise will be able to finance at least 25 percent of the proposed Investment Project's total investment costs from its own resources; and

(g) for each Sub-project involving the involuntary resettlement of any persons in connection therewith, a resettlement action plan has been prepared in consultation with the affected persons on the basis of policies, planning principles and institutional arrangements acceptable to the Bank, designed to improve the living standards of the said persons, including operational procedures adequate to enable the monitoring and evaluation of the implementation of the said resettlement plan.

3. The amount of any one Sub-loan and the aggregate amount of all Sub-loans: (i) to a single Investment Enterprise shall not exceed the equivalent of \$12,000,000; (ii) to related companies shall not exceed the equivalent of \$15,000,000; and (iii) for single Investment Projects shall not exceed 75% of the total estimated cost of said Investment Project net of taxes. For purposes of this paragraph, the term "related companies" shall mean a group of enterprises consisting of an enterprise (the Parent) and each enterprise of which 50% or more of the outstanding voting stock or other proprietary interest is owned or effectively controlled by the Parent.

4. No expenditures for goods or services required for an Investment Project shall be eligible for financing out of the proceeds of the Loan unless:

(a) the Sub-loan for such Investment Project shall have been approved by the Bank and such expenditures shall have been made not earlier than ninety days prior to the date on which the Bank shall have received the application and information required under paragraph 5 (a) of this Schedule in respect of such Sub-loan; or

(b) the Sub-loan for such Investment Project shall have been a free-limit Sub-loan for which the Bank has authorized withdrawals from the Loan Account and such expenditures shall have been made not earlier than ninety days prior to the date on which the Bank shall have received the request and information required under paragraph 5 (b) of this Schedule in respect of such free-limit Sub-loan. For the purposes of the Loan Agreement and this Agreement, a free-limit Sub-loan shall be a Sub-loan (other than the first two Sub-loans made by each Financial Intermediary) for

an Investment Project in an amount to be financed out of the proceeds of the Loan which shall not exceed the sum of \$5,000,000 equivalent in the case of a Sub-loan made by ABC and \$3,500,000 equivalent in the case of a Sub-loan made by EBBC or CMB, when added to any other outstanding amounts financed or proposed to be financed out of the proceeds of the Loan or of any other loan, provided for in any outstanding loan agreement between the Bank and the Borrower entered into before the date of this Agreement, the proceeds of which have been or are being used for financing goods and services directly and materially related to such Investment Project, the foregoing amounts being subject to change from time to time as determined by the Bank.

5. (a) When presenting a Sub-loan (other than a free-limit Sub-loan) to the Bank for approval, a Financial Intermediary shall furnish to the Bank an application, in form satisfactory to the Bank, together with:

(i) a description of the Investment Enterprise and an appraisal of the Investment Project, including a description of the expenditures proposed to be financed out of the proceeds of the Loan;

(ii) the proposed terms and conditions of the Sub-loan, including the schedule of amortization of the Sub-loan; and

(iii) such other information as the Bank shall reasonably request.

(b) Each request for authorization to make withdrawals from the Loan Account in respect of a free-limit Sub-loan shall contain:

(i) a summary description of the Investment Enterprise and the Investment Project, including a description of the expenditures proposed to be financed out of the proceeds of the Loan; and

(ii) the terms and conditions of the Sub-loan, including the schedule of amortization therefor.

(c) Applications and requests made pursuant to the provisions of sub paragraphs (a) and (b) of this paragraph shall be presented to the Bank on or before June 30, 2001.

6. Sub-loans shall be made on terms whereby the Financial Intermediary shall obtain, by written contract with the Investment Enterprise or by other appropriate legal means, rights adequate to protect the interests of the Bank and such Financial Intermediary, including the right to:

(a) require the Investment Enterprise to carry out and operate the Investment Project with due diligence and efficiency and in accordance with sound technical, financial and managerial standards and to maintain adequate records;

(b) require that: (i) the goods and services to be financed out of the proceeds of the Loan shall be procured in accordance with the provisions of Schedule 2 to this Agreement, and (ii) such goods and services shall be used exclusively in the carrying out of the Investment Project;

(c) inspect, by itself or jointly with representatives of the Bank if the Bank shall so request, such goods and the sites, works, plants and construction included in the Investment Project, the operation thereof, and any relevant records and documents;

(d) require that: (i) the Investment Enterprise shall take out and maintain with responsible insurers such insurance, against such risks and in such amounts, as shall be consistent with sound business practice; and (ii) without any limitation upon the foregoing, such insurance shall cover hazards incident to the acquisition, transportation and delivery of goods financed out of the proceeds of the Loan to the place of use or installation, any indemnity thereunder to be made payable in a currency freely usable by the Investment Enterprise to replace or repair such goods;

(e) obtain all such information as the Bank or such Financial Intermediary shall reasonably request relating to the foregoing and to the administration,

operations and financial condition of the Investment Enterprise and to the benefits to be derived from the Investment Project; and

(f) suspend or terminate the right of the Investment Enterprise to the use of the proceeds of the Loan upon failure by such Investment Enterprise to perform its obligations under its contract with such Financial Intermediary.

SCHEDULE 2

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 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. National Shopping

Goods estimated to cost less than \$5,000,000 equivalent per contract, up to an aggregate amount not to exceed \$35,000,000 equivalent, may be procured under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

2. Direct Contracting

Goods which 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 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

1. Consultants' services shall be procured under contracts awarded in accordance with the provisions 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). For complex, time-based assignments, such contracts shall be based on the standard form of contract for consultants' services issued by the Bank, with such modifications thereto as shall have been agreed by the Bank. Where no relevant standard contract documents have been issued by the Bank, other standard forms acceptable to the Bank shall be used.

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:

(a) contracts for the employment of consulting firms estimated to cost less than \$100,000 equivalent each; or

(b) contracts for the employment of individual consultants estimated to cost less than \$50,000 equivalent each. However, said exceptions to prior Bank review shall not apply to:

(i) the terms of reference for such contracts;

(ii) single-source selection of consulting firms;

(iii) assignments of a critical nature, as reasonably determined by the Bank;

(iv) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or above; or

(v) amendments to contracts for the employment of individual consultants raising the contract value to \$50,000 equivalent or above.

