

CONFORMED COPY

LOAN NUMBER 4304 CHA

Project Agreement

(Energy Conservation Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
acting on its own behalf and as Implementing Agency of the
Global Environment Facility

and

BEIJING YUANSHEN ENERGY SAVING TECHNOLOGY COMPANY, LTD.

LIAONING PROVINCE ENERGY CONSERVATION TECHNOLOGY DEVELOPMENT COMPANY, LTD.

and

SHANDONG ENERGY CONSERVATION ENGINEERING COMPANY, LTD.

Dated June 26, 1998

LOAN NUMBER 4304 CHA

PROJECT AGREEMENT

AGREEMENT, dated June 26, 1998, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) acting on its own behalf and as implementing agency of the Global Environment Fund (GEF) and BEIJING YUANSHEN ENERGY SAVING TECHNOLOGY COMPANY, LTD. (Beijing EMC), LIAONING PROVINCE ENERGY CONSERVATION TECHNOLOGY DEVELOPMENT COMPANY, LTD. (Liaoning EMC) and SHANDONG ENERGY CONSERVATION ENGINEERING COMPANY, LTD. (Shandong EMC).

WHEREAS (A) by the Loan Agreement of even date herewith between the People's Republic of China (the Borrower) and the Bank, the Bank has agreed to lend to the Borrower an amount equal to sixty three million Dollars, on the terms and conditions set forth in the Loan Agreement, but only on condition that Beijing EMC, Liaoning EMC and Shandong EMC (collectively, the Energy Management Companies) 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 the Borrower and Beijing Municipality, Liaoning Province and Shandong Province and between Beijing Municipality, Liaoning Province and Shandong Province and each of the Energy Management Companies, respectively, a portion of the proceeds of the Loan provided for under the Loan Agreement will be made available to the Energy Management Companies on terms and conditions set forth in said Subsidiary Loan Agreements;

(C) by the GEF Grant Agreement of even date herewith between the Borrower and the Bank, acting as an implementing agency of the GEF Trust Fund, GEF has agreed to provide a grant to the Borrower in an aggregate principal amount equivalent to sixteen

million three hundred thousand Special Drawing Rights (SDR 16,300,000) (the GEF Grant);

(D) by subsidiary grant agreements to be entered into between the Borrower and each of the Energy Management Companies, a portion of the proceeds of the Grant provided for under the GEF Grant Agreement will be made available to the Energy Management Companies on terms and conditions set forth in said Subsidiary Grant Agreements; and

WHEREAS the Energy Management Companies in consideration of the Bank's entering into the Loan Agreement and the GEF Grant 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 in the General Conditions (as so defined) have the respective meanings therein set forth.

ARTICLE II

Execution of the Project

Section 2.01. (a) Each of the Energy Management Companies 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 Part A of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering, environmental, and technical 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 the Energy Management Companies shall otherwise agree, the Energy Management Companies shall carry out Part A of 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 required for Part A of the Project and to be financed out of the proceeds of the Loan or the Grant shall be governed by the provisions of Schedule 1 to this Agreement.

Section 2.03. (a) The Energy Management Companies 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 and Part A of the Project.

(b) For the purposes of Section 9.08 of the General Conditions and without limitation thereto, the Energy Management Companies 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 the Energy Management Companies, a plan for the future operation of Part A of the Project; and

(ii) afford the Bank a reasonable opportunity to exchange views with the Energy Management Companies on said plan.

Section 2.04. Each of the Energy Management Companies shall duly perform all its obligations under the Subsidiary Loan Agreement and the Subsidiary Grant Agreement to which it is a party. Except as the Bank shall otherwise agree, no Energy Management Company shall take or concur in any action which would have the effect of assigning, amending, abrogating or waiving the Subsidiary Loan Agreement or the Subsidiary Grant Agreement to which it is a party, or any provision thereof.

Section 2.05. (a) Each of the Energy Management Companies shall, at the request of the Bank, exchange views with the Bank with regard to the progress of Part A of the Project, the performance of its obligations under this Agreement and under the Subsidiary Loan Agreement and Subsidiary Grant Agreement to which it is a party, and other matters relating to the purposes of the Loan and the GEF Grant.

(b) Each Energy Management Company shall promptly inform the Bank of any condition which interferes or threatens to interfere with the progress of Part A of the Project, the accomplishment of the purposes of the Loan and the GEF Grant, or the performance by it of its obligations under this Agreement and under the Subsidiary Loan Agreement or Subsidiary Grant Agreement to which it is a party.

ARTICLE III

Management and Operations of the Energy Management Companies

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

Section 3.02. Each Energy Management Company 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 and technical practices.

Section 3.03. Each Energy Management Company 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.

Section 3.04. Except as the Bank shall otherwise agree, none of the Energy Management Companies shall, except in the ordinary course of its business, sell, lease, transfer, assign or otherwise dispose of any of its property or assets if, in the opinion of the Bank, such sale, lease, transfer, assignment or other disposition would materially and adversely affect (a) the ability of such Energy Management Company to perform any of its obligations arising under this Agreement or to achieve the objectives of the Project, or (b) the financial condition or operation of such Energy Management Company.

Section 3.05. Each Energy Management Company shall: (a) maintain its existence and right to carry on its operations and shall promptly take all measures necessary to acquire, maintain, renew or otherwise exercise any and all rights (including, without limitation, land rights), powers, privileges and franchises required for the proper conduct of its operations and the prompt carrying out of its obligations under this Project Agreement and the Subsidiary Loan Agreement and Subsidiary Grant Agreement to which it is a party; and (b) not amend, suspend or repeal any provision of its respective Charter or make any change in its structure, organization, powers or responsibilities which may materially and adversely affect its ability to perform any of its obligations under this Project Agreement.

ARTICLE IV

Financial Covenants

Section 4.01. (a) Each Energy Management Company shall maintain records and accounts adequate to reflect in accordance with sound accounting practices its operations and financial condition and to register separately the operations, resources and expenditures related to the Project.

(b) Each Energy Management Company 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
independent auditors acceptable to the Bank;

applied, by

(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 said financial statements, reflecting the records and accounts referred to in paragraph (a) above, 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, none of the Energy Management Companies shall incur any debt unless a reasonable forecast of its revenues and expenditures shows that the estimated net revenues of such Energy Management Company, for each fiscal year during the term of the debt to be incurred, shall be at least 1.6 times its estimated debt service requirements 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 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 "net revenues" means the difference between:

(A) the sum of revenues from all sources related to operations and net non-operating income, 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 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 payment if any) of, and interest and other charges on, debt.

(vi) The term "reasonable forecast" means a forecast prepared by the respective Energy Management Company, not earlier than twelve months prior to the incurrence of the debt in question, which both the Bank and the Energy Management Company preparing such forecast accept as reasonable and as to

which the Bank has notified such Energy Management Company 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 such Management Company.

Energy

(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, none of the Energy Management Companies shall incur any debt, if after the incurrence of such debt the ratio of debt to equity shall be greater than 60 to 40.

(b) For the purposes of this Section:

(i) 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.

(ii) 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 4.04. Each Energy Management Company shall take all measures necessary to ensure that the average collection period for its accounts receivable from Host Consumers under Energy Performance Contracts does not exceed sixty (60) days.

Section 4.05. Each Energy Management Company shall:

(a) no later than March 31 in each year, commencing March 31, 1999, prepare and furnish to the Bank for its review and comment its proposed five-year investment program and financing plan together with its business plan and projected financial statements; and

(b) thereafter, implement said program and plans taking into account the Bank's comments thereon.

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. (a) This Agreement and all obligations of the Bank and of the Energy Management Companies thereunder shall terminate on the earlier of the following two dates:

- (i) the date on which the Loan Agreement shall terminate; or
- (ii) a date twenty (20) years after the date of this Agreement.

(b) If the Loan Agreement terminates before the date specified in paragraph (a) (ii) of this Section, the Bank shall promptly notify the Energy Management Companies of this event.

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:

INTBAFRAD
Washington, D.C.

Telex:

248423 (MCI) or
64145 (MCI)

For Beijing EMC:

Beijing Yuanshen Energy Saving Technology Company, Ltd
No. 23, Dinghuibeili
Haidian District
Beijing, China

Facsimile:

010-8813-105

For Liaoning EMC:

Liaoning Province Energy Conservation Technology
Development Company, Ltd.
No. 64 Xian Street
Heping District
Shenyang, Liaoning
China

Facsimile:

024-350-0768

For Shandong EMC:

Shandong Energy Conservation Engineering Company, Ltd.
16 Jiefang Road
Jinan, Shandong
China

Facsimile:

0531-854-0864

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: (a) Beijing EMC, may be taken or executed by the Chairman of its Board of Directors, or by such

other person or persons as such Chairman shall designate in writing; (b) Liaoning EMC, may be taken or executed by the Chairman of its Board of Directors, or by such other person or persons as such Chairman shall designate in writing; and (c) Shandong EMC, may be taken or executed by the Chairman of its Board of Directors, or by such other person or persons as such Chairman shall designate in writing; and each of the Energy Management Companies 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/ Jean-Michel Severino

Regional Vice President
East Asia and Pacific

BEIJING YUANSHEN ENERGY SAVING TECHNOLOGY
COMPANY, LTD.

By /s/ Liu Xiaoming

Authorized Representative

LIAONING PROVINCE ENERGY CONSERVATION
TECHNOLOGY DEVELOPMENT COMPANY, LTD.

By /s/ Liu Xiaoming

Authorized Representative

SHANDONG ENERGY CONSERVATION
ENGINEERING COMPANY, LTD.

By /s/ Liu Xiaoming

Authorized Representative

SCHEDULE 1

Procurement 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 and September 1997 (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 Competitive Bidding

Except as provided in Paragraph C.2 below, goods estimated to cost less than \$1,000,000 equivalent per contract, up to an aggregate amount not to exceed \$3,700,000 equivalent for each Energy Management Company, may be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

2. International and National Shopping

Goods, up to an aggregate amount not to exceed \$26,700,000 equivalent for each Energy Management Company, may be procured under contracts awarded (a) on the basis of international shopping procedures, if estimated to cost less than \$2,000,000 equivalent per contract; and (b) on the basis of national shopping procedures, if estimated to cost less than \$50,000 equivalent per contract, in each case in accordance with the provisions of paragraphs 3.5 and 3.6 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 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 \$250,000 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.

SCHEDULE 2

Implementation Program

A. Monitoring and Evaluation

1. Each Energy Management Company shall:

(a) maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, in accordance with indicators acceptable to the Bank, the carrying out of Part A of the Project and the achievement of the objectives thereof;

(b) prepare, under terms of reference satisfactory to the Bank, and furnish to the Borrower and the Bank, on or about August 31, 2000 and August 31, 2002, a report integrating the results of the monitoring and evaluation activities performed pursuant to subparagraph (a) above, on the progress achieved in the carrying out of Part a of the Project during the period preceding the date of said report and setting out the measures recommended to ensure the efficient carrying out of Part A of the Project and the achievement of the objectives thereof during the period following such date; and

(c) review with the Borrower and the Bank, by September 30, 2000 and September 30, 2002, or such later date as the Bank shall request, the respective reports referred to in subparagraph (b) above and, thereafter, take all measures required to ensure the efficient completion of Part A of the Project and the achievement of the objectives thereof, based on the conclusions and recommendations of the said reports and the Bank views on the matter.

B. Subproject Implementation

1. (a) Each Energy Management Company shall identify six (6) or more types of Subprojects (Project Lines) which it will offer to prospective Host Consumers and shall implement one or more Subprojects on a pilot basis (a Pilot Subproject) within each of its identified Project Lines.

(b) An Energy Management Company which proposes to implement a Subproject shall enter into an Energy Performance Contract with the Host Consumer for such Subproject, pursuant to which the Energy Management Company shall obtain rights adequate to protect the interests of the Bank, the Borrower and the Energy Management Company, including the right to:

(i) require the Host Consumer to carry out the Subproject with due diligence and efficiency and in accordance with sound technical, financial, managerial and environmental standards, and to maintain adequate records and to carry out any implementation and mitigation plans for such Subproject required under paragraph B.1 (e) (iii) of this Schedule;

(ii) inspect, by itself or jointly with representatives of the Bank if the Bank shall so request, goods to be financed out of the proceeds of the Loan or the GEF Grant, and the operation thereof and any relevant records and documents;

(iii) require that: (A) the Host Consumer 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 (B) 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 or the GEF Grant to the place of use or installation, any indemnity thereunder to be made payable in a currency freely usable by the Host Consumer to replace or repair such goods;

(iv) obtain all such information as the Bank, the Borrower or the Energy Management Company shall reasonably request relating to the foregoing and to the administration, operations and financial condition of the Host Consumer and to the benefits to be derived from the Subproject; and

(v) suspend or terminate the right of the Host Consumer to the use of the goods financed with the proceeds of the Loan or GEF Grant upon failure by such Host Consumer to perform its obligations under its Energy Performance Contract with the Energy Management Company.

(c) Each Energy Performance Contract shall be on commercial terms and for Subprojects which meet criteria acceptable to the Bank.

(d) (i) Subject to paragraph (d)(ii) below, no expenditures for goods required for a Subproject, including Pilot Subprojects, shall be eligible for financing out of the proceeds of the GEF Grant or the Loan unless the Energy Performance Contract with respect to such Subproject entered or to be entered into between the respective Energy Management Company and Host Consumer shall have been approved by the Bank.

(ii) The Bank's specific approval of a Subproject and the Energy Performance Contract with respect thereto shall not be required under paragraph (d)(i) above if, and to the extent that, such Subproject and such Energy Performance Contract are in a Project Line which has been specifically approved by the Bank for implementation by such Energy Management Company, and such approval has not been revoked.

(iii) When presenting a Project Line for such approval by the Bank, the respective Energy Management Company shall furnish to the Bank an application, in form and substance satisfactory to the Bank, together with such information as the Bank shall reasonably request, and after the Bank shall have approved such Project Line, subsequent Subprojects in that Project Line shall be presented to the Bank for information after approval by the Energy Management Company concerned.

(e) When presenting an Energy Performance Contract with respect to a Subproject to the Bank for approval, or for information pursuant to paragraph (d)(iii) above, the respective Energy Management Company shall furnish to the Bank an application, in form and substance satisfactory to the Bank, together with: (i) a substantiated estimate of total benefits attributable to Host Consumer energy cost savings; (ii) an estimate of the anticipated financial rate of return to the Energy Management Company with respect to the Subproject; and (iii) where the Subproject has potential negative environmental or safety impacts, a plan for Subproject implementation which will mitigate those impacts, and confirmation of necessary governmental approvals; and (iv) such other information as the Bank may reasonably request.

