

CONFORMED COPY

LOAN NUMBER 3788 CHA

Shenyang
Project Agreement

(Shenyang Industrial Reform Project)

between

INTERNATIONAL BANK FOR RECONSTRUCTION
AND DEVELOPMENT

and

SHENYANG MUNICIPALITY

Dated January 11, 1995

LOAN NUMBER 3788 CHA

SHENYANG PROJECT AGREEMENT

AGREEMENT, dated January 11, 1995, between INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank) and SHENYANG MUNICIPALITY (Shenyang).

WHEREAS 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 one hundred seventy-five million dollars (\$175,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that Shenyang agree to undertake such obligations toward the Bank as are set forth in this Agreement, that the Financial Intermediaries agree to undertake such obligations toward the Bank as are set forth in the Financial Intermediaries Project Agreement, and that SMTCL agree to undertake such obligations toward the Bank as are set forth in the SMTCL Project Agreement;

WHEREAS Shenyang, 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. (a) Shenyang 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 Parts A and C of the Project with due diligence and efficiency and in conformity with appropriate administrative, financial, engineering and industrial 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 Shenyang shall otherwise agree, Shenyang shall carry out the Project in accordance with the Implementation Program set forth in Schedule 2 to this Agreement.

Section 2.02. (a) Shenyang shall relend the proceeds of the Loan allocated from time to time to Categories (2)(b) and (3)(b) to SMTCL under a subsidiary loan agreement whose terms and conditions shall have been approved by the Bank, which shall include: (i) interest at a rate not less than the sum of (A) the rate applicable from time to time to the Loan pursuant to Section 2.05 of the Loan Agreement, plus (B) at least one and two-tenths of one per cent (1.2%); (ii) repayment over a period not to exceed fifteen years, including five years of grace; (iii) a commitment charge payable at a rate equal to the commitment charge applicable from time to time to the Loan pursuant to Section 2.04 of the Loan Agreement; and (iv) foreign exchange risk between the dollar and Renminbi to be borne by SMTCL.

(b) Shenyang shall relend the proceeds of the Loan allocated from time to time to Category (1) to BOCOM and ICBC under a subsidiary loan agreement with each of BOCOM and ICBC, whose terms and conditions shall have been approved by the Bank, which shall include: (i) interest at a rate equal to the rate applicable from time to time to the Loan pursuant to Section 2.05 of the Loan Agreement; (ii) repayment over a period not to exceed twenty years, including five years of grace; (iii) a commitment charge payable at a rate equal to the commitment charge applicable from time to time to the Loan pursuant to Section 2.04 of the Loan agreement; and (iv) foreign exchange risk between the dollar and Renminbi to be borne by BOCOM and ICBC, respectively.

(c) Shenyang shall exercise its rights under the Subsidiary Loan Agreements in such manner as to protect the interests of the Bank and Shenyang and to accomplish the purposes of the Loan, and, except as the Bank shall otherwise agree, Shenyang shall not assign, amend, abrogate or waive any of the Subsidiary Loan Agreements or any provision thereof.

Section 2.03. Except as the Bank shall otherwise agree, procurement of the goods and consultants' services required for Parts A and C of 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 2.04. Shenyang 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 Shenyang Project Agreement and Parts A and C of the Project.

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

(b) Shenyang 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 Loan, or the performance by Shenyang of its obligations under this Agreement and under the Subsidiary Loan Agreements.

ARTICLE III

Financial Covenants

Section 3.01. (a) Shenyang shall maintain or cause to be maintained records and accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of Parts A and C of the Project of the departments or agencies of Shenyang responsible for carrying out the Project or any part thereof.

(b) Shenyang 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, 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 and accounts and the audit thereof as the Bank shall from time to time reasonably request.

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 Shenyang thereunder shall terminate on the date on which the Loan Agreement shall terminate in accordance with its terms, and the Bank shall promptly notify Shenyang 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 (RCA)
82987 (FTCC)
64145 (WUI) or
197688 (TRT)

For Shenyang:

Shenyang Municipal Finance Bureau
No. 78, Beiyijing Street, Shenhe District
Shenyang 110014
People's Republic of China

Telex:

80040 SYFAO 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 Shenyang may be taken or executed by the Vice Mayor responsible for or such other person or persons as said Vice Mayor shall designate in writing, and Shenyang 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/ Russell J. Cheetham

Regional Vice President
East Asia and Pacific

SHENYANG MUNICIPALITY

By /s/ Li Daoyu

Authorized Representative

SCHEDULE 1

Procurement and Consultants' Services

Section I: Procurement of Goods

Part A: International Competitive Bidding

1. 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, Shenyang shall use the relevant standard bidding documents issued 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, Shenyang shall use bidding documents based on other internationally recognized standard forms agreed with the Bank.

2. To the extent practicable, contracts for goods shall be grouped into bid packages estimated to cost the equivalent of \$200,000 or more.

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A.1 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

Limited International Bidding

1. Goods required for Part C of the Project which the Bank agrees are supplied through a limited number of suppliers and which are estimated to cost an amount not to exceed the equivalent of \$1,400,000 in the aggregate, 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).

Local Shopping

2. Goods required for Parts A and C of the Project, estimated to cost the equivalent of less than \$200,000 per contract, up to an aggregate amount equivalent to \$5,200,000, 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.

Direct Contracting

3. Goods which the Bank agrees are of a proprietary nature may be awarded after 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 (i) each contract to be procured in accordance with Part A hereof estimated to cost the equivalent of \$1,000,000 or more and (ii) each contract to be procured under Part C.1 hereof, 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, such 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.

3. 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 Shenyang in carrying out Parts A and C of the Project, Shenyang 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"). For complex, time-based assignments, Shenyang shall employ such consultants under contracts using the standard form of contract for consultants' services issued by the Bank, with such modifications as shall have been agreed by the Bank. Where no relevant standard contract documents have been issued by the Bank, Shenyang shall use other standard forms agreed with the Bank.

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 individuals estimated to cost less than \$50,000 or equivalent each. However, said exceptions to prior Bank review shall not apply to (a) the terms of reference for such contracts, (b) single-source selection of consulting firms, (c) assignments of a critical nature, as reasonably determined by the Bank, (d) amendments to contracts for the employment of consulting firms raising the contract value to \$100,000 equivalent or above, or (e) amendments to contracts for the employment of individual consultants raising the contract value to \$50,000 equivalent or above.

SCHEDULE 2

Implementation Program

Part A: Support for the Reform Action Program

1. Shenyang shall exchange views with the Bank, at least annually, on the progress in the implementation of the Reform Action Program.

2. Shenyang shall: (a) carry out the training under Part A of the Project in accordance with a training program satisfactory to the Bank; (b) carry out Parts A.2, A.4, and A.5 of the Project in accordance with a time-bound action plan satisfactory to the Bank; and (c) furnish to the Bank for review by October 15 in each year an annual work program under Part A of the Project for the next calendar year.

Part B: Environmental Protection

1. Shenyang shall: (a) carry out Part C.1 of the Project through its environmental protection bureau; and (b) promptly upon completion of the hazardous waste treatment facility under said Part C.1, transfer operational responsibility thereof to the Solid Waste Collection and Disposal agency of Shenyang Municipality.

2. Under Part C.2 of the Project, Shenyang shall: (a) prepare and furnish to the Bank for comments not later than December 31, 1995, recommendations for a structure and levels of tariffs designed to recover the costs of collection, treatment and disposal of hazardous wastes; (b) thereafter, on the basis of said recommendations but in any event not later than January 1, 1998, establish a structure and levels of tariffs and commence

imposing and collecting such tariffs, taking into account the Bank's comments on said recommendations; and (c) exchange views with the Bank from time to time on the structure and levels of such tariffs, taking into account changing price levels, and revise such tariffs on the basis of such exchanges of views.

3. Shenyang shall: (a) prepare and furnish to the Bank, not later than December 31, 1995, for the Bank's comments, draft municipal hazardous waste management regulations; and (b) by June 30, 1996, promulgate and thereafter, implement, such regulations, taking into account the Bank's comments thereon.

4. Shenyang shall carry out the training under Part C of the Project in accordance with a training program satisfactory to the Bank.

Part C: Overall Project Implementation

Shenyang shall maintain: (a) a project leading group to be responsible for providing policy guidance under the Project, with composition and functions acceptable to the Bank; and (b) the project management office, with competent staff in adequate numbers, and functions and responsibilities acceptable to the Bank.

