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Contract # 842058

AGREEMENT

MADE THIS 14TH DAY OF OCTOBER, 1948 BETWEEN THE COUNCIL FOR UNITED STATES AID OF THE EXECUTIVE YUAN OF THE REPUBLIC OF CHINA (hereinafter referred to as CUSA) AS REPRESENTED BY THE CHINESE TECHNICAL MISSION AT 2001 - 19TH STREET, N. W., WASHINGTON, D. C. AND THE J. G. WHITE ENGINEERING CORPORATION (hereinafter referred to as the Corporation) WITH OFFICES AT 80 BROAD STREET, NEW YORK, N. Y., U. S. A.

It is mutually agreed as follows:

ARTICLE I

CUSA agrees to employ the Corporation to render the engineering and management engineering services described below and the Corporation agrees to perform such services upon the terms and conditions hereinafter set forth, which services are to be in connection with any present or future Industrial Reconstruction and Replacement Programs in China which are to be studied or carried on under the direction of the Joint Reconstruction and Replacement Committee of CUSA and Economic Cooperation Administration (ECA) (hereinafter referred to as the Joint Committee.)

ARTICLE II

The services to be rendered by the Corporation shall consist of the following:

1. Make recommendations for preproject engineering on such projects as may be designated by the Joint Committee.
2. Review applications submitted to the Joint Committee and make recommendations as to approval, such review of applications to include study of plans and specifications, prices, availability, condition and sources of supply of materials and equipment, time required for accomplishment, and benefits to be derived therefrom. Such review and recommendations shall be made with the view to incorporate, wherever possible, unutilized materials and equipment, at the time existent in China, into approved projects.
3. In the case of approved projects and in accordance with such conditions as may be attached thereto, (a) review the procurement and distribution of materials and equipment connected therewith; (b) make such recommendations to the Joint Committee, for the conduct, execution and construction of such approved projects as may, in the Corporation's judgment, be necessary or desirable; (c) and generally supervise the conduct, execution and construction of such approved projects on behalf of the Joint Committee. Approved pro-

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jects shall be deemed to be projects which have received all necessary approvals of ECA and CUSA.

4. Make such reports with respect to matters covered by this agreement as from time to time may be requested by the Joint Committee; and maintain such records as will provide an adequate permanent account of its work, and turn over such records to CUSA and to ECA upon termination of its engagement. Such records shall be open, at all times, to the inspection of CUSA and ECA duly authorized representatives.

5. Carry out such other consulting duties with respect to matters covered by this agreement as may be directed by the Joint Committee.

Contact between the Joint Committee and the Corporation shall be through such representative or representatives as from time to time may be designated for the purpose by the Joint Committee and by the Corporation, respectively.

### ARTICLE III

The Corporation shall furnish to CUSA the services of such number of personnel as may in the judgment of the Joint Committee and the Corporation be required to perform such duties as aforementioned.

The Corporation shall submit to the Joint Committee before assignment detailed professional records and classification, as defined in Article VIII, of such personnel as are being assigned for the aforementioned duties.

At the request of the Joint Committee, the Corporation shall recall any of its personnel in China because of misconduct or unsatisfactory work.

### ARTICLE IV

First class travel accommodations for the Corporation's personnel sent to China, from points of origin in the U. S. A. to and return from China shall be furnished or paid for by CUSA; provided, however, that for the Corporation's Project Manager, Administrative Officer and Senior Engineers, whose assignments in China are for a duration of one year or more, CUSA shall pay for the first class passages for their wives and their minor dependent children from points of origin in the U. S. A. to China. CUSA shall pay for the first class passages for such wives and minor dependent children for their return from China to points of origin in the U. S. A., except in any case where the husband or father, as the case may be, for his own personal reasons resigns from



his assignment in China prior to the expiration of his first year's assignment in China. Such payment for passages of families shall be limited to one round trip. First class travel accommodations in China using the most appropriate facilities available, will also be furnished or paid for by CUSA to the Corporation's personnel in connection with their services under this agreement.

Suitable living quarters and subsistence in China for the Corporation's personnel sent to China and for the families described above in this Article IV shall be provided and paid for by CUSA in Chinese currency and shall conform to a standard of living equivalent to that of comparable personnel in industries in China.

After a reasonable period of experience with living conditions in China, a periodic lump sum living allowance in Chinese currency may be mutually arranged and paid by CUSA in lieu of the above provisions. Such allowance may be adjusted from time to time.

Official identifications will be issued by CUSA to the Corporation's personnel in China.

Medical and hospital expenses incurred in China for the Corporation's personnel and for the families described above in this Article IV will be assumed by and paid for by CUSA in Chinese currency.

#### ARTICLE V

Adequate office space and general facilities in China shall be provided and paid for by CUSA in Chinese currency, or paid for by CUSA in Chinese currency if provided by the Corporation.

The most appropriate communication facilities available in China, whenever requested by the Corporation shall be provided and paid for by CUSA in Chinese currency.

#### ARTICLE VI

Chinese stenographic and clerical assistants and office boys for the Corporation's office in China will be hired and paid in Chinese currency by the Corporation, to be reimbursed by CUSA; any Chinese technical assistants required for the performance of this agreement and acceptable to the Joint Committee and the Corporation shall be provided and paid for by CUSA in Chinese currency.

Non-Chinese assistants at the time in China may be employed at rates agreed between the Joint Committee and the Corporation and paid for by the Corporation to be reimbursed by CUSA. Such reimbursement may include payment of the cost of travel to the U. S. A.



ARTICLE VII

In consideration of the mutual covenants herein contained, CUSA agrees to pay to the Corporation monthly a fixed fee at the rate of U. S. \$2,500 per calendar month through a banking institution in the United States, which fee shall be net of any and all taxes, duties, imposts, tariffs or other levies by the Chinese Government or any province, state, department, municipality or other divisions thereof.

ARTICLE VIII

For the services performed by the Corporation's personnel assigned under this agreement to work in China, CUSA agrees to pay monthly in United States currency to the Corporation per diem rates according to the following schedule:

Each Day Per Person

	<u>Within U. S.</u>	<u>Overseas</u>
Project Manager	U.S. \$150	U.S. \$175
Administrative Officer	125	150
Senior Engineers	125	150
Assistant Engineers	100	125
Accountants	75	100
Assistant Accountants	65	75
Field Assistants	55	65
Secretaries	39	45

The above rates will be charged on the basis of a six day week for work after departure from continental United States for China, and on the basis of a five day week during the holding and processing period in continental United States before departure. Temporary absence from work of any of the foregoing personnel in China because of illness shall not take away the right of the Corporation to receive the foregoing per diem rates with respect to such personnel and the compensation specified in Article VII. In the event any general increase in the level of compensation by the Corporation for the class of personnel, in which any of the personnel listed above is included, shall occur during the term of this contract, the per diem rates listed above for the personnel included in such class shall be adjusted in proportion to such general salary adjustment for such class of personnel, provided that no such adjustment in per diem rates shall apply until the first anniversary of this contract; and provided that no such readjustment of such per diem rates shall exceed at any time 15% of the rates listed above for any class of personnel.

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Chinese Income Tax, if any, or other levies of any nature whatsoever in China will be paid by CUSA.

For necessary time devoted to work under this agreement in the Corporation's New York office by personnel not assigned to China, per diem rates conforming with its established practice of time distribution will be charged, except as otherwise provided in Article IX.

In addition to the above, specialist personnel not in the regular employ of the Corporation may be hired by the Corporation after approval by the Joint Committee at rates agreed between the Joint Committee and the Corporation.

#### ARTICLE IX

CUSA will reimburse the Corporation at bare cost for all "out-of-pocket" expenses incurred by the Corporation in the interest of the work, including, without being limited to, the travelling and living expenses of executive officers, or other members of the Corporation's staff, when away from the Corporation's New York office, communication charges and office equipment and supplies, such reimbursement to be made in the currency in which such expenses were incurred. No charge will be made for the services of the Corporation's executive or administrative officers for the supervision and administration of this work. No charge will be made for the services of the Corporation's accountants or correspondence stenographers in the New York office, or for normal New York office overhead expenses, or for insurance.

#### ARTICLE X

The cost to the Corporation of any legal fees, costs and expenses necessary to defend the rights of the Corporation in suits or claims relating to the execution of the work in the interest of this agreement will be assumed and paid by CUSA. These provisions, however, shall not apply to suits by personnel of the Corporation or to suits for breach of this contract or to any suits by or on behalf of the E.C.A. Administrator.

#### ARTICLE XI

The title to all equipment, materials and supplies, the cost of which CUSA has paid or is obligated to pay, shall be in the name of CUSA.

#### ARTICLE XII

The Corporation shall submit promptly to the Joint Committee a budget in two parts (one for U. S. dollar costs and



and the other for Chinese currency costs) for the completion of the work. The Corporation also shall submit to the Joint Committee a similar monthly budget in two parts, which shall be delivered to the Joint Committee five days prior to the end of each month for the succeeding month.

#### ARTICLE XIII

It is understood that, insofar as practicable, billings and payments under this agreement shall be made monthly. By the tenth of each month the Corporation shall present to the below-mentioned banking institution a detailed invoice covering services and "out-of-pocket" expenses in U. S. dollars in connection with this agreement within the previous month. Such invoice will be used as the basis for payments in U. S. dollars to the Corporation through a designated banking institution in the U. S. A. in accordance with the established procedures of ECA. A duplicate of such invoice shall be forwarded promptly to the Joint Committee for review, and, in case of any error or discrepancy with the terms of this agreement, compensating debit or credit shall be made in the invoices of the later months or the final month.

CUSA agrees to advance amounts of Chinese currency as necessary to enable the Corporation to meet current expenses under this agreement. Invoices covering expenses in Chinese currency will be submitted by the Corporation to the Joint Committee monthly. Such invoices when approved by the Joint Committee will be the basis for payment of such expenses by CUSA.

The books of the Corporation in connection with the work under this Agreement shall be subject to the inspection of the Joint Committee and of the ECA Comptroller.

#### ARTICLE XIV

A. This agreement shall be effective at the opening of business in New York, Tuesday, October 19th, 1948.

B. This agreement is being entered into on the understanding that the amounts of U. S. dollars payable by CUSA to the Corporation hereunder shall be financed through the issuance of an ECA letter of Commitment in accordance with ECA procedures.

C. This agreement shall terminate on the earlier of (a) 12 o'clock midnight, New York Eastern Standard Time, on September 30, 1950 or (b) such date as may be specified in a previous written notice from the ECA Administrator to the Corporation. The Corporation has entered into this agreement in the expectation that it will not be terminated prior to 12 o'clock midnight, New York Eastern Standard Time, on September 30, 1949.



D. If pursuant to clause (b) of paragraph C this agreement shall be terminated prior to 12 o'clock midnight, New York Eastern Standard Time on September 30, 1949, it is agreed between CUSA and the Corporation that CUSA, in addition to all other amounts payable hereunder to such termination, will pay to the Corporation

- (i) during the wind-up period, if any, as hereinafter defined, the fee provided for in Article VII
- (ii) during the wind-up period, if any, the per diem rates listed in the first paragraph of Article VIII hereof to any specialist sent from the U. S. A.; in each such case such rates and amounts to be paid only until the return of the respective individual to point of origin in the U. S. A.
- (iii) the return transportation provided for in Articles IV and VI, and
- (iv) a sum equal to that portion of U. S. \$100,000 which the number of days between the date of such termination or the end of the wind-up period, whichever is later, and October 1, 1949, bears to 365 days, such sum to constitute liquidated damages for the loss of the fee and profits to which the Corporation would otherwise have been entitled for the period between that time and October 1, 1949.

During the wind-up period, CUSA will continue to provide the living quarters, subsistence, identification, and medical and hospital expenses described in Article IV.

E. If pursuant to clause (b) of paragraph C this agreement shall be terminated after 12 o'clock midnight New York Eastern Standard Time on September 30, 1949, it is agreed that CUSA, in addition to all other amounts payable hereunder to such termination, will pay to the Corporation

- (i) during the wind-up period, if any, the fee provided for in Article VII,
- (ii) during the wind-up period, if any, the per diem rates listed in the first paragraph of Article VIII hereof to any specialist sent from the U. S. A.; in each such case such rates and amounts to be paid only until the return of the respective individual to point of origin in the U. S. A.
- (iii) the return transportation provided for in Articles IV and VI.



During the wind-up period, CUSA will continue to provide the living quarters, subsistence, identifications, and medical and hospital expenses described in Article IV.

F. If by reason of wars, revolutions, strikes or civil or other disturbances, or by acts of God, or by force majeure the performance by the Corporation of its duties under this agreement shall become impracticable, then this agreement shall forthwith terminate, in which event CUSA, in addition to all other amounts payable hereunder to such termination, will pay to the Corporation

- (i) during the wind-up period, if any, the fee provided for in Article VII,
- (ii) during the wind-up period, if any, the per diem rates listed in the first paragraph of Article VIII hereof and the amounts payable under the last paragraph of Article VIII hereof to any specialist sent from the U. S. A.; in each such case such rates and amounts to be paid only until the return of the respective individual to point of origin in the U. S. A.
- (iii) the return transportation provided for in Articles IV and VI.

During the wind-up period, CUSA will continue to provide the living quarters, subsistence, identifications, and medical and hospital expenses described in Article IV. If, however, in the judgment of the Joint Committee any of the acts listed above in this paragraph F will only result in a short temporary suspension of operations under this agreement, then this agreement shall not terminate. If there is any dispute as to whether or not this agreement should terminate by reason of such acts, CUSA or the Corporation may refer such dispute to the ECA Administrator whose decision shall be conclusive.

G. The term "wind-up period" as used in this Article XIV shall mean such reasonable period, if any, after termination as may be necessary to enable the personnel listed in the first paragraph of Article VIII to return from China, which period in the case of termination under paragraph D or E of this Article XIV, shall not exceed 60 days after receipt by the Corporation, either from CUSA or from the ECA Administrator, of notice of such termination and in the case of termination under paragraph F of this Article XIV shall not exceed 60 days after such termination.

H. This agreement also may be terminated on such date, not earlier than April 1, 1950, as may be specified in a notice

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delivered by either of the parties hereto to the other party at least 90 days prior to the date so specified.

ARTICLE XV

The term "Joint Committee" as used herein shall also include such Joint Chinese - U. S. A. Committee or Organization as may be the successor to the Joint Committee described in Article I hereof.

ARTICLE XVI

This agreement shall be deemed and taken to have been made and delivered in the State of New York and shall be interpreted and construed in accordance with the laws of said State.

WITNESS:

CHINESE TECHNICAL MISSION  
ON BEHALF OF  
THE COUNCIL FOR UNITED STATES AID OF  
THE EXECUTIVE YUAN OF THE REPUBLIC OF  
CHINA.

By \_\_\_\_\_

WITNESS:

THE J. G. WHITE ENGINEERING CORPORATION

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