LOAN NUMBER 2741-VIE

# LOAN AGREEMENT
(Ordinary Operations)

(Ha Noi Metro Rail System Project)
(Line 3: Nhon – Ha Noi Station Section)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 13 OCTOBER 2011

LAL: VIE 40080

**LOAN AGREEMENT**
**(ORDINARY OPERATIONS)**

LOAN AGREEMENT dated 13 October 2011 between SOCIALIST REPUBLIC OF VIET NAM (the "Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Project will be carried out by Ha Noi People's Committee ("HPC"), and for this purpose the Borrower will make available to HPC the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB;

(C) the Borrower also applied to European Investment Bank ("EIB") for, and EIB approved, a loan not exceeding seventy three million Euros (€73,000,000) to finance a portion of the Project ("EIB Loan") upon terms and conditions set forth in the loan agreement between the Borrower and EIB;

(D) the Borrower also applied to Direction Générale du Trésor ("DGT") for, and DGT approved, loans not exceeding two hundred and fifty million Euros (€250,000,000) to finance a portion of the Project ("DGT Loan") upon terms and conditions set forth in the loan agreements between the Borrower and DGT;

(E) the Borrower also applied to Agence Française de Développement ("AFD") for, and AFD approved, loans not exceeding one hundred and ten million Euros (€110,000,000) to finance a portion of the Project ("AFD Loan") upon terms and conditions set forth in the loan agreements between the Borrower and AFD; and

(F) ADB has agreed to make a loan to the Borrower from ADB's ordinary capital resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and HPC;

NOW THEREFORE the parties hereto agree as follows:

## ARTICLE I

### Loan Regulations; Definitions

Section 1.01. All the provisions of the Ordinary Operations Loan Regulations Applicable to LIBOR-Based Loans made from ADB's Ordinary Capital Resources, dated 1 July 2001 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 3.03 is deleted and the following is substituted therefor:

**Commitment Charge; Credit.** (a) The Borrower shall pay a commitment charge on the unwithdrawn amount of the Loan at the rate and on the terms specified in the Loan Agreement.

(b) ADB shall provide to the Borrower a credit at the rate specified in the Loan Agreement, which credit shall remain fixed for the term of the Loan. ADB shall apply the amount of the credit against the interest payable by the Borrower.

(b) Section 3.06 is deleted and the following is substituted therefor:

(a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be reduced, ADB shall provide a Rebate to any Borrower with an outstanding Loan on which a higher Fixed Spread is applicable. The amount of the Rebate shall be determined by multiplying (i) the difference between the Fixed Spread applicable to the outstanding Loan and the Fixed Spread that will be applied to new Loans (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the lower Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB achieving savings, ADB shall provide a Rebate to the Borrower. The amount of the Rebate shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall apply the amount of the Rebate against the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

(c) Section 3.07 is deleted and the following is substituted therefor:

(a) Following any announcement by ADB that the Fixed Spread applicable to new Loans shall be increased, any Borrower with an outstanding Loan on which a lower Fixed Spread is applicable shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the

difference between the Fixed Spread that will be applied to new Loans and the Fixed Spread applicable to the outstanding Loan (expressed as a percentage per annum), by (ii) the principal amount of the outstanding Loan on which the Borrower shall pay interest for all interest periods commencing on and after the effective date of the higher Fixed Spread that will be applied to new Loans.

(b) Following any announcement by ADB that its Funding Cost Margin calculations with respect to any Loan Currency (or Approved Currency) in any Semester resulted in ADB incurring additional costs, the Borrower shall pay ADB a Surcharge. The amount of the Surcharge shall be determined by multiplying (i) the Funding Cost Margin (expressed as a percentage per annum) by (ii) the principal amount of the Loan on which the Borrower shall pay interest for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated. ADB shall add the amount of the Surcharge to the interest payable by the Borrower for the Interest Period commencing immediately after the Semester for which the Funding Cost Margin was calculated.

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

(a) "APs" means persons affected by the resettlement carried out under the Project;

(b) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2010, as amended from time to time);

(c) "EA" or "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means HPC, which is responsible for the carrying out of the Project;

(d) "EIA" means Environmental Impact Assessment report dated 12 August 2010, prepared for the Project, and agreed by the Borrower and ADB;

(e) "E&M" means electrical and mechanical;

(f) "EMP" means the environmental monitoring plan dated 12 August 2010 developed in accordance with the EIA as agreed between the Borrower and ADB;

(g) "GAP" means Gender Action Plan dated 12 August 2010 prepared for the Project and agreed between the Borrower and ADB;

(h) "Goods" means equipment and materials to be financed out of the proceeds of the Loan for rail works, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding consulting services;

(i) "HIV/AIDS" means human immunodeficiency virus/acquired immune deficiency syndrome;

(j) "HPC" means the Ha Noi People's Committee within the territory of the Borrower or any successor thereto;

(k) "HRB" means Ha Noi Metropolitan Transport Rail Project Board established within HPC;

(l) "IA" or "Project Implementing Agency" means HRB responsible for implementing relevant activities under the Project as described in the PAM;

(m) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2007, as amended from time to time);

(n) "Metro" means a rail based mass rapid transport system;

(o) "PAM" means the Project administration manual for the Project dated 28 February 2011 and agreed between HPC and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(p) "Procurement Guidelines" means ADB's Procurement Guidelines (2010, as amended from time to time);

(q) "Procurement Plan" means the procurement plan for the Project dated 28 February 2011 and agreed between HPC and ADB, based on the Procurement Plan approved on 22 June 2010 by HPC, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(r) "Project Districts" means Ha Noi's Tu Liem, Cau Giay, Ba Dinh, Dong Da, and Hoan Kiem districts;

(s) "Project facilities" means facilities developed, constructed, updated and/or maintained under the Project;

(t) "RP" means the resettlement plan dated 11 February 2011, prepared for the Project, as updated and agreed between HPC and ADB;

(u) "SPS" means ADB's Safeguard Policy Statement (2009); and

(v) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, all Project related civil, structural, building services, architectural/builders work and all necessary utility services that are provided as part of a single responsibility or turnkey contract, but excluding consulting services.

## ARTICLE II

## The Loan

Section 2.01. (a) ADB agrees to lend to the Borrower from ADB's ordinary capital resources an amount of two hundred ninety three million Dollars ($293,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.06 of this Loan Agreement.

(b) The Loan has a principal repayment period of 20 years, and a grace period as defined in paragraph (c) of this Section.

(c) The term "grace period" as used in paragraph (b) of this Section means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.02. The Borrower shall pay to ADB interest on the principal amount of the Loan withdrawn and outstanding from time to time at a rate for each Interest Period equal to the sum of LIBOR and 0.60% as provided by Section 3.02 of the Loan Regulations, less a credit of 0.30% as provided by Section 3.03 of the Loan Regulations.

Section 2.03. The Borrower shall pay a commitment charge of 0.15% per annum. Such charge shall accrue on the full amount of the Loan (less amounts withdrawn from time to time), commencing 60 days after the date of this Loan Agreement.

Section 2.04. Interest and other charges on the Loan shall be payable semiannually on 15 September and 15 March in each year.

Section 2.05. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the provisions of Schedule 2 to this Loan Agreement.

Section 2.06. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

(i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, whether withdrawn and outstanding or unwithdrawn, to an Approved Currency;

(ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding from a Floating Rate to a Fixed Rate, or vice versa; and

(iii) the setting of limits on the Floating Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Floating Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by ADB shall be considered a "Conversion", as defined in Section 2.01(6) of the Loan Regulations, and shall be effected in accordance with the provisions of Article V of the Loan Regulations and the Conversion Guidelines.

## ARTICLE III

## Use of Proceeds of the Loan

Section 3.01. The Borrower shall cause HPC to apply the proceeds of the Loan to the financing of expenditures on part of the Project, as described in paragraph 3 of Schedule 1 to this Loan Agreement in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure or cause to be procured items of expenditure in accordance with the provisions of Schedule 4 to this Loan Agreement, as applicable. ADB may refuse to finance a contract where any such item has not been procured under procedures substantially in accordance with those agreed between the Borrower and ADB or where the terms and conditions of the contract are not satisfactory to ADB.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. The Loan Closing Date for withdrawals from the Loan Account for the purposes of Section 9.02 of the Loan Regulations shall be 30 June 2016 or such other date as may from time to time be agreed between the Borrower and ADB.

## ARTICLE IV

## Particular Covenants

Section 4.01. (a) The Borrower shall cause HPC to carry out the Project with due diligence and efficiency and in conformity with sound applicable technical, financial, business, and development practices.

(b) In the carrying out of the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall make available to HPC, promptly as needed, and on terms and conditions acceptable to ADB the funds, facilities, services, land and other resources, as required, in addition to the proceeds of the Loan, for the carrying out of the Project.

Section 4.03. The Borrower shall ensure that the activities of its departments and agencies with respect to the carrying out of the Project and operation of the Project facilities are conducted and coordinated in accordance with sound administrative policies and procedures.

Section 4.04. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.05. The Borrower shall take all actions which shall be necessary on its part to enable HPC to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

## ARTICLE V

## Suspension; Acceleration of Maturity

Section 5.01 The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 9.01(I) of the Loan Regulations:

(a) If the EIB Loan, the DGT Loan, or the AFD Loan shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date; and

(b) HPC shall have failed to perform any of its obligations under the Project Agreement.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 9.07(a)(iv) of the Loan Regulations: any of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

## ARTICLE VI

## Effectiveness

Section 6.01. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of this Loan Agreement for the purposes of Section 10.04 of the Loan Regulations.

## ARTICLE VII

## Delegation of Authority

Section 7.01. The Borrower hereby designates HPC as its agent for the purposes of taking any action or entering into any agreement required or permitted under Section 3.03 of this Loan Agreement.

Section 7.02. Any action taken or any agreement entered into by HPC pursuant to the authority conferred under Section 7.01 of this Loan Agreement shall be fully binding on the Borrower and shall have the same force and effect as if taken by the Borrower.

Section 7.03. The authority conferred on HPC under section 7.01 of this Loan Agreement may be revoked or modified by agreement between the Borrower and ADB.

## ARTICLE VIII

## Miscellaneous

Section 8.01. The State Bank of Viet Nam of the Borrower is designated as representative of the Borrower for the purposes of Section 12.02 of the Loan Regulations.

Section 8.02. The following addresses are specified for the purposes of Section 12.01 of the Loan Regulations:

For the Borrower

State Bank of Viet Nam
47 – 49 Ly Thai To
Ha Noi, Viet Nam

Facsimile Numbers:

(84-4) 38250-612
(84-4) 38258-385.

For ADB

Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Manila, Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2015.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB.

SOCIALIST REPUBLIC OF VIET NAM

By _____
NGUYEN VAN BINH
Authorized Representative

ASIAN DEVELOPMENT BANK

By _____
TOMOYUKI KIMURA
Country Director
Viet Nam Resident Mission

## SCHEDULE 1

## Description of the Project

1. The objective of the Project is improved public transport services in Project Districts. The Project will complete a priority Metro line and ensure other necessary public transport services to provide an efficient and competitive public transport system to attract existing private transport users. The Project will also support Ha Noi's climate mitigation efforts in adopting a low carbon transport growth path, by encouraging a substantive modal shift from private vehicles to mass rapid public transport means, which is more energy efficient and lowers greenhouse gas emissions.

2. The Project shall comprise the following components:

**Component 1- Metro Line 3 System Development:** including all Works and E&M systems for Metro line 3 measuring (a) approximately 12.5 kilometers in length, of which about 3.6 kilometers will be underground, about 8.4 kilometers will be elevated, and about 500 meters will be in transition ramp; and (b) depot and ancillary buildings, elevated viaducts, transition tunnel portal, bored tunnels, and approximately 12 stations. The Works portion of this component includes all civil, structural, building services, architectural/builders work and all necessary utility services to the Works. The E&M systems portion of this component includes all railway systems including track work, rolling stock, traction power, signaling and telecommunications, E&M systems and facilities, ticketing system and ancillary services and facilities required to operate a modern Metro line.

**Component 2- Implementation Support:** including provision of support to HRB (a) to complete: (i) the feasibility study; (ii) detailed design; and (iii) procurement assistance and construction supervision for all Works and E&M systems; and (b) for verification of (i) engineering designs and cost estimates; and (ii) Project management and independent design safety audit.

3. Out of the components described in paragraph 2 above, ADB will finance about 3.6 Kilometers of underground Works and track work.

4. The Project is expected to be completed by 31 December 2015.

## SCHEDULE 2

### Amortization Schedule

**(Ha Noi Metro Rail System Project)**
(Line 3: Nhon – Ha Noi Station Section)

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by ADB by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

| Payment Due | Installment Share (Expressed as a % based on 10% annuity) |
|---|---|
| 15 September 2016 | 0.827816 |
| 15 March 2017 | 0.869207 |
| 15 September 2017 | 0.912667 |
| 15 March 2018 | 0.958301 |
| 15 September 2018 | 1.006216 |
| 15 March 2019 | 1.056526 |
| 15 September 2019 | 1.109353 |
| 15 March 2020 | 1.164820 |
| 15 September 2020 | 1.223061 |
| 15 March 2021 | 1.284214 |
| 15 September 2021 | 1.348425 |
| 15 March 2022 | 1.415846 |
| 15 September 2022 | 1.486639 |
| 15 March 2023 | 1.560971 |
| 15 September 2023 | 1.639019 |
| 15 March 2024 | 1.720970 |
| 15 September 2024 | 1.807019 |
| 15 March 2025 | 1.897369 |
| 15 September 2025 | 1.992238 |
| 15 March 2026 | 2.091850 |
| 15 September 2026 | 2.196442 |
| 15 March 2027 | 2.306264 |
| 15 September 2027 | 2.421578 |
| 15 March 2028 | 2.542657 |
| 15 September 2028 | 2.669789 |

Schedule 2

| | |
|---|---|
| 15 March 2029 | 2.803279 |
| 15 September 2029 | 2.943443 |
| 15 March 2030 | 3.090615 |
| 15 September 2030 | 3.245146 |
| 15 March 2031 | 3.407403 |
| 15 September 2031 | 3.577773 |
| 15 March 2032 | 3.756662 |
| 15 September 2032 | 3.944495 |
| 15 March 2033 | 4.141720 |
| 15 September 2033 | 4.348806 |
| 15 March 2034 | 4.566246 |
| 15 September 2034 | 4.794558 |
| 15 March 2035 | 5.034286 |
| 15 September 2035 | 5.286000 |
| 15 March 2036 | 5.550311 |
| Total | 100.000000 |

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by ADB by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. Withdrawals made within 2 calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by ADB by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by ADB under the Currency Hedge Transaction relating

to said Conversion; or (ii) if ADB so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

## SCHEDULE 3

## Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the allocation of amounts of the Loan to each such Category ("Table"). (Reference to "Category" or "Categories" in this Schedule is to a Category or Categories of the Table).

Percentages of ADB Financing

2. Except as ADB may otherwise agree, each item of expenditure shall be financed out of the proceeds of the Loan on the basis of the percentages set forth in the Table.

Interest and Commitment Charge

3. The amount allocated to Category 2 is for financing interest and commitment charge on the Loan during the implementation period of the Project. ADB shall be entitled to withdraw from the Loan Account and pay to itself, on behalf of the Borrower, the amounts required to meet payments, when due, of such interest and commitment charge.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures; and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Schedule 3

Imprest Account and Statement of Expenditures

6. (a) Except as ADB may otherwise agree, the Borrower shall establish immediately after the Effective Date, an imprest account at a commercial bank acceptable to ADB. The imprest account shall be established, managed, replenished and liquidated in accordance with the Loan Disbursement Handbook, and detailed arrangements agreed upon between the Borrower and ADB. The currency of the imprest account shall be the Dollar. The ceiling for the imprest account shall not exceed the lower of (i) the estimated expenditure for the first 6 months of Project implementation; or (ii) the equivalent of 10% of the Loan amount.

(b) The statement of expenditures procedure may be used for reimbursement of eligible expenditures and to liquidate advances provided into the imprest account, in accordance with the Loan Disbursement Handbook and detailed arrangements agreed upon between the Borrower and ADB. Any individual payment to be reimbursed or liquidated under the statement of expenditures procedure shall not exceed the equivalent of $50,000.

Attachment to Schedule 3

**TABLE**

| ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Ha Noi Metro Rail System Project) (Line 3: Nhon – Ha Noi Station Section) | | | | |
|---|---|---|---|---|
| **CATEGORY** | | | | **ADB FINANCING** |
| **Number** | **Item** | **Total Amount Allocated for ADB Financing ($)** | | **Percentage and Basis for Withdrawal from the Loan Account** |
| | | **Category** | **Subcategory** | |
| 1 | Works | 243,500,000 | | 100 percent of total expenditure claimed* |
| 1A | Underground | | 220,900,000 | 100 percent of total expenditure claimed* |
| 1B | Rail works | | 22,600,000 | 47 percent of total expenditure claimed |
| 2 | Interest and Commitment Charge | 18,500,000 | | 100 percent of amounts due |
| 3 | Unallocated | 31,000,000 | | |
| | Total | 293,000,000 | | |

*Exclusive of taxes and duties imposed within the territory of the Borrower

## SCHEDULE 4

## Procurement of Goods and Works

General

1. The procurement of Goods and Works subject to and governed by the Procurement Guidelines.

2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines, as applicable.

Procurement of Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

(a) International Competitive Bidding;
(b) National Competitive Bidding; and
(c) Shopping.

4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Domestic Preference

5. The Borrower may grant a margin of preference in the evaluation of bids under international competitive bidding in accordance with paragraphs 2.55(a) and 2.56 of the Procurement Guidelines for domestically manufactured Goods and paragraphs 2.55(b) and 2.56 of the Procurement Guidelines for domestic Works.

National Competitive Bidding

6. The Borrower and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Borrower's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Borrower and ADB shall be set out in the Procurement Plan. Any subsequent change to the agreed modifications and clarifications shall become effective only after written approval of such change by the Borrower and ADB.

Conditions for Handing Over of Sites for Works to the Contractors

7. The Borrower shall not issue a site possession notice for commencing Works until:

(a) the head of Project district resettlement committee shall have confirmed in writing that: (i) payment has been fully disbursed to the APs and rehabilitation measures are in place for that specific section as per the RP; (ii) already compensated APs for that specific section

have been cleared from the area; and (iii) the specific section of the Project is free from any encumbrances; and

(b) any significant changes to the location, alignment of Works, or environmental impacts arising from the detailed design of the Project shall have been approved by the relevant agency of the Borrower and endorsed by ADB.

Industrial or Intellectual Property Rights

8. (a) The Borrower shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

ADB's Review of Procurement Decisions

9. Contracts procured under international competitive bidding procedures, national competitive bidding procedures, and shopping shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

## SCHEDULE 5

## Execution of Project and Operation of Project Facilities; Financial Matters

Implementation Arrangements

1. The Borrower and HPC shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by HPC and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

Counterpart Financing

2. The Borrower shall ensure that HPC provides, on a timely basis, all funds and resources necessary for incremental administration costs, land acquisition costs and costs relating to management of the Project facilities. The Borrower shall further ensure that HPC provides additional funding to cover any funding shortfalls that may occur during Project implementation.

Capacity Support for HRB

3. The Borrower shall ensure that the capacity development program for strengthening HRB's capacity is implemented in time to ensure the timely and successful implementation of the Project. It is expected that the said capacity building program will be financed under a separate project.

Measures for Promotion of Public Transport

4. The Borrower shall, and shall cause HPC to, ensure that under the separate project, as mentioned in paragraph 3 of this Schedule 5, suitable measures ensuring promotion of public transport are incorporated. Such measures may include the following: (a) conduct of a traffic system study; (b) development and adoption of integrated traffic system plan, based on the result of the traffic system study; and (c) enforcement of necessary policy and regulatory measures to promote shift from private to public transport mode, including but not limited to, issuing regulations on: (i) private demand management; (ii) establishing and enforcing a parking strategy; (iii) bus prioritization measures; and (iv) promoting fuel efficiency measures.

Operation and Maintenance Planning

5. The Borrower shall, and shall cause HPC to, ensure that: (a) an operation and maintenance mechanism is established for the Project facilities; (b) HPC establishes an operation and maintenance company responsible for arranging adequate resources to ensure that the Project railway network is maintained and operated in good condition and all reasonable actions are undertaken so the benefits of the Project railway network is realized over its expected lifetime; and (c) HPC prepares the annual maintenance report and presents it to ADB in a format agreeable to ADB including: (i) an evaluation of the condition of the rail network, as measured by the annual rail condition surveys; (ii) a report on traffic on the rail

network, as measured by the annual traffic counts; (iii) a report on the maintenance works and expenditures undertaken during the previous year; and (v) a physical and financial description of the maintenance works planned to be performed during the year.

Governance and Anticorruption

6. HPC shall cause HRB to ensure that during the Project implementation: (a) relevant provisions of ADB's Anticorruption Policy (1998, as amended to date) are included in all bidding documents for the Project; (b) contracts, financed under the Project, include provisions specifying the right of ADB to audit and examine the records and accounts of HRB, contractors, suppliers, consultants, and other service providers as they relate to the Project; (c) periodic inspection of contractors is undertaken to ensure that fund withdrawal and settlement procedures are followed; and (d) a Project website is established within 12 months of the Effective Date, accessible by the general public, to disclose information about various matters concerning the Project, including general Project information, procurement, Project progress, and contact details in the English and Vietnamese languages. The website will also provide a link to ADB's Integrity Unit (http://www.adb.org/Integrity/complaint.asp) for reporting to ADB any grievances or allegations of corrupt practices arising out of the Project and Project activities. With regard to procurement, the website shall include information on the list of participating bidders, name of the winning bidder, basic details on bidding procedures adopted, amount of contract awarded, and the list of Goods and Works procured.

Grievance Redress Mechanism

7. HPC shall ensure that within 60 days from the Effective Date, a complaint and problem management task force, acceptable to ADB, is established and functioning effectively to: (a) review and document eligible complaints of Project stakeholders; (b) proactively address grievances; (c) provide the complainants with notice of the chosen mechanism/action; and (d) prepare periodic reports to summarize the number of complaints received and resolved, and final outcomes of the grievances and chosen actions and make these reports available to ADB upon request. Eligible complaints include those related to the Project, any of the service providers, any person responsible for carrying out the Project, complaints on misuse of funds and other irregularities, and grievances due to any safeguard issues, including resettlement, environment, ethnic minorities, and gender.

Environment

8. HPC shall, and shall cause HRB to, ensure that: (a) the Project is designed, constructed, and operated in accordance with the environmental laws and regulations of the Borrower, SPS, EIA and EMP; if there is any discrepancy between the Borrower's laws and regulations and SPS, then SPS shall apply; (b) the institutional arrangements for effective implementation of environmental safeguards including the grievance redress mechanism (as described in EIA) are in place before commencement of Works construction; (c) environmental approvals required by the Borrower are obtained in a timely manner and copies of such approvals are submitted to ADB; (d) Works contracts are supervised and monitored in accordance with EMP; (e) the mitigation measures as specified in EIA and EMP, are fully implemented in a timely manner and are incorporated into the bidding documents and Works contracts, and compliance of contractors to the provisions of the EMP is ensured; (f) if any unanticipated environmental impacts become apparent during Project implementation, a corrective action plan is prepared and approved by ADB; (g) the EMP is

implemented in full to address the environmental aspects during the construction of the Project, including actions to be taken for auditing, measuring, and monitoring the environment and safety conditions of the work, and responding to breaches in environmental or safety requirements; (h) if there are any additional components or changes in the Project resulting in adverse environmental impacts and are not within the scope of EIA, new or supplementary environment assessment report, consistent with the SPS, is prepared and approved by the relevant agencies of the Borrower and ADB; (i) semiannual reports on implementation of the EMP are submitted to ADB on a timely basis; (j) Project components to be funded by the Borrower and other financiers adopt the provisions of EIA and EMP and comply with SPS; and (k) HPC engages and retain qualified and experienced external expert(s), acceptable to ADB, acceptable to ADB, to review and verify the environmental monitoring information provided by HPC or HRB to ADB with regard to EMP implementation. The external expert(s) shall not be involved in day-to-day supervision of the Project. Monitoring shall be undertaken annually and corresponding report shall be submitted to ADB on a timely basis.

Resettlement

9. HPC shall, and shall cause HRB to, ensure that: (a) the RP for the Project is implemented in accordance with its terms; (b) all land and rights-of-way required for the Project are made available in a timely manner; (c) the provisions of the RP, including compensation and entitlements for APs, shall not be downgraded and are implemented in accordance with all the Borrower's applicable laws and regulations and SPS; (d) all APs are consulted and given adequate opportunity to participate in resettlement planning and implementation; (e) compensation and resettlement assistance are given to APs prior to their dispossession and displacement; (f) timely provision of counterpart funds is made for land acquisition and resettlement activities; (g) any obligations in excess of the RP budget estimate are promptly met; (h) APs are at least as well off as they would have been in the absence of the Project; (i) the RP is updated upon completion of the detailed design and detailed measurement survey, disclosed to APs and submitted to ADB for acceptance prior to award of Works; (j) the RP is revised as necessary to reflect any significant material changes in the Project scope, and submit any such changes to ADB for its acceptance; (k) HRB supervises the contractors to ensure compliance with requirements of the RP; (l) adequate staff and resources are committed to supervising and monitoring implementation of the RP; and (m) an external monitoring agency, acceptable to ADB is engaged by HRB before the conduct of detailed measurement survey to monitor compliance and forward reports to ADB and HPC as specified in the RP.

Applicability of ADB's Safeguard Policy to Entire Project

10. The Borrower shall ensure that the portions of the Project to be financed by EIB, DGT, and AFD abide by all the requirements under SPS.

Gender and Development

11. HPC shall, and shall cause HRB to, ensure that: (a) GAP is fully implemented in accordance with ADB's Gender and Development Policy (1998) including, but not limited to: (a) use of employment targets for women and gender-specific core labor standards as part of all Works and other transport services employment generation; (b) consideration of gender-inclusive physical design features in new metro infrastructure and sustainable

transport measures; (c) targets for women's participation and inclusion of gender-related content in capacity building activities; (d) reference to gender in research and plans developed under the Project; and (e) mitigating gender-related impacts of resettlement including human trafficking.

Health Risks

12. In coordination with the local health bureaus, HPC shall, and shall cause HRB to, ensure that: (a) the HIV/AIDS prevention plan is implemented in accordance with its terms; (b) the Works contractors disseminate information and conduct awareness training on the risks and prevention measures of HIV/AIDS and other communicable diseases to their employees, temporary laborers and family members, and subcontractors during Project implementation; (c) measures to prevent other communicable diseases are implemented within the construction sites, as specified in the EMP; and (d) these requirements are included in the Works contracts, monitored and reported semiannually to ADB through HPC.

Labor Standards

13. HPC shall, and shall cause HRB to, ensure that the construction contractors: (a) provide timely payment of wages and safe working conditions to all workers; (b) pay equal wages to the female and male employees for equivalent labor; (c) do not employ child labor as required by the relevant laws and regulations of the Borrower; (d) the contractors involved in the Project implementation maximize the employment of local people, particularly women and ethnic minorities, who meet the job and efficiency requirements for Project construction, operation and maintenance; and (e) such workers are provided with adequate on-the-job training and safety training.