MEMORANDUM OF UNDERSTANDING

between

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

and

THE GOVERNMENT OF THE ITALIAN REPUBLIC

ON THE CONCESSION OF A SOFT LOAN FOR THE

BINH THUAN WATER SECTOR PROJECT

Hanoi, May 2009

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"BINH THUAN WATER SECTOR PROJECT"

The Government of the Socialist Republic of Vietnam, represented by the Ministry of Planning and Investment (MPI), and the Government of the Italian Republic, represented by the Ministry of Foreign Affairs, General Directorate for Development Co-operation (MAE-DGCS).

MAE-DGCS and MPI, hereinafter referred to as the "Parties", have decided to enter into this Agreement, hereinafter referred to as the "Agreement", for the implementation of the project "Binh Thuan water sector project ", hereinafter referred to as the "Programme".

REMINDING the Memorandum of Understanding signed in Rome on May 26th, 1997;

FOLLOWING the request of the Government of Socialist Republic of Vietnam (hereinafter referred to as "GoV"), dated November 2005, to the Government of the Italian Republic (hereinafter referred to as "GoI) to finance the Programme, through a soft loan of Euro 15.000.000;

WHEREAS based on the feasibility study prepared by the Provincial People's Committee (PPC) of Binh Thuan, MAE-DGCS carried out two appraisal missions in Vietnam in 2006 and 2007, followed, on August 2007, by a third mission of the Central technical Unit of the MAE-DGCS, aiming to define the financial proposal to be submitted to the Steering Committee of MAE-DGCS;

WHEREAS the Steering Committee of MAE-DGCS has approved the Programme, on November 22nd, 2007, with a soft loan of Euro 15.000.000 for works and services, and a grant of Euro 600.000 for technical assistance and monitoring;

CONSIDERING that in accordance with the new regulation on using ODA, the GoV already decentralised responsibilities for the implementation of the Programme to the Provincial People's Committee (PPC) of Binh Thuan and its Programme Management Unit (PMU);

The Parties hereby agree to implement the Project according to the following.

ARTICLE 1
Purpose of the Agreement

1.1 This Agreement establishes the mutual obligations of the Parties concerning the financing and the implementation of the Programme.

1.2 No party other than MAE-DGCS and the PPC of Binh Thuan, on behalf of the MPI, will be allowed to derive any rights from this Agreement or have claim to the funds involved.

ARTICLE 2
Parts and Definitions

2.1 This Agreement consists in 11 articles and one Annex (Programme summary).

2.2 The words and acronyms mentioned below have the following meaning:

GoV	Government of the Socialist Republic of Vietnam
GoI	Government of the Italian Republic
PPC	Provincial People's Committee of Binh Thuan
MAE-DGCS	General Directorate for Development Co-operation of the Italian Ministry of Foreign Affairs
MPI	Vietnamese Ministry of Planning and Investment
MF	Vietnamese Ministry of Finance (The Borrower)
Artigiancassa	The Italian Bank appointed by the GoI to manage the soft loan credit lines (The Lender);
Financial Convention	Loan Agreement signed by Artigiancassa and the local Authority appointed by the GoV that defines the soft loan terms and conditions and the modality of disbursement and repayment;
PMU	Programme Management Unit of the PPC of Binh Thuan

ARTICLE 3
Project Description and objectives

3.1 The activities of the Programme are described in the Programme Summary (Annex 1). The Annex 1 has to be considered an essential and substantial part of the Agreement.

3.2 The general objective of the Programme is the improvement of life standards and health conditions of the targeted population's group of the Binh Thuan's province.

3.3 The purposes of the two projects of the Programme are: *(i)* to meet the drinkable water demand in the North Ham Thuan district; *(ii)* to meet the demand for irrigation water in the Bac Binh area.

3.4

ARTICLE 4
Institutions and Bodies involved and Governance of the Project

4.1 The main Institutions and Bodies involved in the implementation of the Programme are:

4.1.1 <u>For the Vietnamese side</u>:

- MPI as the Vietnamese Counterpart for this Agreement, representing the GoV;
- MF as the Vietnamese Counterpart for the Financial Convention to be signed with Artigiancassa (The Borrower);
- PPC acting as the executing Agency, through its PMU, for the negotiation, awarding and implementation of the contracts.

4.1.2 For the Italian side:

- MAE-DGCS, acting as the Italian Counterpart for this Agreement and as the Italian Financing Agency for the funds to be provided for the Programme;
- Artigiancassa, the Italian Bank signatory of the Financial Convention with the MF (The Lender);
- The Cooperation Office of the Italian Embassy in Hanoi, acting as part of the MAE-DGCS Project Assistance and Monitoring system.

4.1.3 PMU

A Programme Management Unit (PMU), will be established for assisting the PPC of Binh Thuan in implementing and monitoring the Project activities. PMU, whose staffs is to be approved by PPC and agreed by MAE-DGCS soon after coming into force of the present Agreement, will consist in an operational core of Vietnamese experts appointed by PPC and by Italian experts, appointed by MAE-DGCS.

4.2 Project Implementation guidelines

4.2.1 After the signature of this Agreement, MF and Artigiancassa will enter into a Financial Convention relating to the whole amount to be financed under the Italian Soft Loan for the goods, services and works of the Programme. The Financial Convention will provide the legal framework between the Lender and the Borrower and will include the provisions of the present Agreement specifying the procedures for the actual disbursement and repayment.

4.2.2 PPC, through its PMU, will launch the bids following the Vietnamese Bidding Law, especially using the rule on objectivity and impartiality, the rule of economic, financial, professional and technical capacity, adapting to the Italian soft loan specific requirements (Law 49/87).
Tenders will only be opened to Italian qualified Companies, Joint Ventures and Individuals.
The procurement procedures are the following:

- International Competitive Bidding (ICB) for all procurements, works, Supplies and Consulting Services.
    - Works and Supplies will be procured on the basis of the Lowest evaluated bid selection method.
    - Consulting services will be procured on the basis of the Quality and Cost Based Selection (QCBS).

4.2.3 The bidding documents shall be submitted by PPC to MAE-DGCS for "no-objection", before the publication of the tender procurement notice. PPC, for each tender relevant to items to be financed out of the Soft Loan proceeds, will evaluate the bids, will prepare and submit to MAE-DGCS a tender evaluation report, along with the contract, initialled by the selected contractor, in order to obtain the "no-objection" by MAE-DGCS before the final signature.

4.2.4 PPC, assisted by PMU, will control the implementation of the Programme and MAE-DGCS will verify the proper utilisation of the proceeds for the Soft Loan through its own bodies.

ARTICLE 5
Obligations of GoI

GoI engages itself to:

5.1 Provide a maximum of Euro 15.000.000 (fifteen million) as the Soft Loan to be utilised for financing the activities of the Programme.

5.2 Provide a grant of Euro 600.000, of which 60.000 Euro for the constitution of the PMU and 540.000 Euro for technical assistance to the PMU and monitoring missions. The grant funds will be managed directly by MAE-DGCS and by the Development Cooperation Office of the Italian Embassy in Hanoi.

5.3 The Soft Loan will be provided by Artigiancassa to MF on condition that it implies a concessionality level of 80% (eighty per cent) and the final conditions (which fluctuate depending on the return of the GoI bonds) will be determined at the moment of the signature of the Financial Convention. Indicatively, at present such conditions are:

- Interest rate: 0.0% (zero point zero per cent) per year;
- Repayment of principals: in 36 year, the maturity of the first of such instalment being fixed at 20 years after the date of the first disbursement.

Participation in the bidding will be open on equal terms to all natural and legal persons of Italy only;

The total price of the Programme contracts must be relevant to goods and services of Italian origin/nationality for a quota not lower than 40 % (forty per cent). The remaining 60% (sixty per cent) can be related to the supply of goods and services of local origin.

5.4 The soft loan will be disbursed by Artigiancassa according to the condition specified in the Financial Convention. In particular Artigiancassa will credit the funds to the supplier, as by the Borrower request, after the evaluation of the supply contract and after the control of the administrative documentation (invoices, shipping documents, certificates of acceptance, etc.).

ARTICLE 6
Obligations of the GOV

6.1 GoV engages itself in:

a) Fulfilling, and causing all Vietnamese institutions involved in the Programme to fulfil all the obligations generating from this Agreement, by stipulating the necessary agreements with the competent bodies, being responsible for the use of the Soft loan, for the management of the contracts and for the supervision of the activities;

b) Ensuring that financial resources, up to a maximum of Euro 2.700.000,00 (two millions seven hundred thousand) are fully and timely provided for the smooth implementation of the Programme. The costs to be covered under the above mentioned Vietnamese contribution are the following:

i) Custom duties on goods procured under the Italian Soft Loan;

ii) Expropriations;

iii) Construction of the irrigation canal from the Ca Tot reservoir to Bac Binh area;

iv) Salaries of the personnel appointed, by the Vietnamese side, to be part of the PMU.

c) Carrying out all the procurement of works, goods and services to be financed out of the Soft Loan;

d) Ensuring that all Vietnamese duties and taxes, including VAT and excluding income taxes resulting from the contract to be financed out of the Soft Loan proceeds, will not be covered by the Italian Soft Loan;

e) Ensuring Programme monitoring through PMU, which will prepare a semi-annual report on Programme activities. PMU reports will inform on the status of the operations for each Programme component, including relevant financial disbursements. Reports will include a specific chapter regarding the implementation of the envisaged environmental mitigation measures;

f) Designating the PMU National Team Leader (NTL) among its high-level managers as soon as this Programme Agreement becomes effective.

g) Preparing a Programme Completion Report within six months from the end of Programme activities and carrying out the joint evaluations officially requested by MAE-DGCS.

ARTICLE 7
MAE-DGCS controls during implementation

7.1 MAE-DGCS reserves the right to control, in general, the smooth implementation of the Project and the transparent, effective and efficient use of the funds provided by Italy. MAE-DGCS' control activities can be carried out through its own staff missions, or through personnel of the Cooperation Office of the Italian Embassy in Hanoi.

7.2 Financial Controls are assigned to Artigiancassa.

7.3 In order to allow the MAE-DGCS controls, PPC will ensure, upon receipt of MAE-DGCS' prior written notice, that MAE-DGCS personnel has access to the Projects areas and to the Programme technical documentation; PPC will also report to MAE-DGCS, at least quarterly, on the progress of the Projects implementation and will retain records of all Programme documentation, including the related correspondence and reports, for 10 (ten) years after the completion of the Programme.

ARTICLE 8
Impediments and Force Majeure

8.1 In case of impediments to the implementation of the Programme due to major forces causes (such as war, flood, fire, typhoon, earthquake, labour conflicts and strikes, acts of any government, unexpected transportation difficulties) or in case of danger or unsafe conditions for the expatriate personnel, the following provisions will be applied:

a. in case the impediments last up to twelve months, the Programme activities will be suspended. The residual funds will be maintained until the end of the impediment itself and MAE-DGCS authorises the

resumption of the Programme activities;

b. in case of lack of the agreement, the GoV commits itself to reimburse in a single payment, the contractual amount disbursed in advance but not totally spent yet.

ARTICLE 9
Settlement of Disputes and Amendments to the Agreement

9.1 Any dispute between the Parties arising out of the implementation of this Agreement will be settled amicably by consultations or negotiations between the Parties through diplomatic channels.

9.2 The Parties may modify this Agreement at any time, provided that any modification should be set out into writing and agreed by the Parties.

ARTICLE 10
Termination of the Agreement

10.1 The MAE-DGCS reserves the right to terminate the Programme for political reasons. In case of termination of the Programme, the GoV will refund in a single payment the entire contractual amount disbursed in advance and not totally spent yet.

ARTICLE 11
Entry into Force and Duration

11.1 This Agreement will enter into force on the date of the signature of the agreement.

11.2 This Agreement is to last 5 years, starting from the date of its entry into force. Upon agreement between the two Parties, its lasting can be extended until all Project activities have been completed.

In witness thereof the undersigned, duly authorised by their respective Governments, have signed the present Agreement.

Done in Hà Nội on 22/05/2009, in two originals in the English language, both texts being equally authentic.

for the Government of the Socialist Republic of Vietnam

for the Government of the Italian Republic