LOAN NUMBER 2754-VIE

# LOAN AGREEMENT
(Ordinary Operations)

(Viet Nam Water Sector Investment Program – Project 1)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 8 JUNE 2011

LAL:VIE 41456

**LOAN AGREEMENT**
**(Ordinary Operations)**

LOAN AGREEMENT dated 8 June 2011 between the SOCIALIST REPUBLIC OF VIET NAM ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) by a framework financing agreement dated 5 May 2011 between the Borrower and ADB, ADB has agreed to provide a multitranche financing facility to the Borrower for purposes of financing projects under the Viet Nam Water Sector Investment Program;

(B) by a periodic financing request dated 26 May 2011 submitted by the Borrower, the Borrower has applied to ADB for a loan for the purposes of Project 1 described in Schedule 1 to this Loan Agreement (hereinafter referred to as the Project);

(C) the Project will be carried out by Saigon Water Corporation ("SAWACO"), and for this purpose the Borrower will make available to SAWACO the proceeds of the Loan provided for herein upon terms and conditions satisfactory to ADB; and

(D) 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 SAWACO;

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 2.01(50) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB and SAWACO.

(b) The term "Project Executing Agency" appearing in Section 7.04(b), 9.01(d), 9.01(f), 9.01(k), 10.01(c) and 10.02(c) of the Loan Regulations shall be substituted by the term "SAWACO".

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

(b) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in subparagraphs (iv) and (v) of paragraph 3 of Schedule 1 to this Loan Agreement, but excluding any services provided in relation to Goods and Works;

(c) "Coordinating Agency" means MPI or any successor thereto acceptable to ADB, which is responsible for the overall supervision and execution of the VWSIP;

(d) "EMP" means the Environmental Management Plan included in the IEE prepared for the Project and agreed between the Borrower and ADB;

(e) "Facility" means the multitranche financing facility provided by ADB to the Borrower for purposes of financing projects under the VWSIP;

(f) "FAM" means the facility administration manual for the Facility dated 16 December 2010 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(g) "FFA" means the framework financing agreement dated 5 May 2011 between ADB and the Borrower with respect to the Facility;

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

(i) "IEC" means information, education and communication;

(j) "IEE" means the initial environmental examination dated September 2010 prepared for the Project by SAWACO and approved by ADB;

(k) "IPPF" means the Indigenous Peoples Planning Framework prepared for the MFF;

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

(m) "MPI" means the Borrower's Ministry of Planning and Investment or any successor thereto;

(n) "PAM" means the project administration manual for the Project dated 16 December 2010 and agreed between SAWACO and ADB, as updated from time to time in accordance with the respective administrative procedures of SAWACO and ADB;

(o) "PFR" means the periodic financing request submitted or to be submitted by the Borrower, for the purposes of each loan under the Facility, and for the purpose of this Loan Agreement means the periodic financing request dated 26 May 2011;

(p) "PMU" means the Project Management Unit established within SAWACO, as more fully described in the PAM;

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

(r) "Procurement Plan" means the procurement plan for the Project dated 16 December 2010 and agreed between SAWACO and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(s) "Project 1" means the Ho Chi Minh Water Supply: Reduction of Non-Revenue Water; Strengthening and Expansion of Water Supply Network and Institutional Strengthening for Saigon Water Corporation (Phase 2011-2015) Project;

(t) "Project Executing Agency" for the purposes of, and within the meaning of, the Loan Regulations means SAWACO or any successor thereto acceptable to ADB, which is responsible for carrying out the Project;

(u) "Project facilities" means the piped water systems and other water supply-related facilities to be constructed or provided under the Project;

(v) "RF" means the resettlement framework dated 31 October 2009 prepared for the Project and approved by ADB;

(w) "RP" means the resettlement plan dated October 2010 prepared for a portion of the Project and approved by ADB, and the complete resettlement plan to be prepared for the entire Project following completion of detailed designs and agreed between the Borrower and ADB;

(x) "SAWACO" means the Saigon Water Corporation or any successor thereto;

(y) "Subsidiary Loan Agreement" means the agreement between the Borrower and SAWACO, satisfactory to ADB, referred to in Section 3.01 of this Loan Agreement;

(z) "VWSIP" means the Viet Nam Water Sector Investment Program (referred to in Vietnamese language as the Viet Nam Water Sector Development Program); and

(aa) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related 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 one hundred thirty eight million Dollars ($138,000,000), 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 1 August and 1 February 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. (a) The Borrower shall relend the proceeds of the Loan to SAWACO under a Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB.

(b) The Borrower shall cause SAWACO to apply the proceeds of the Loan to the financing of expenditures on the Project 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 carrying out 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 SAWACO 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 and the Project Agreement.

Section 4.02. The Borrower shall make available to SAWACO, promptly as needed, the funds, facilities, services, and other resources 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 SAWACO 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.

Section 4.06. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreement in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Loan Agreement shall be assigned, amended, abrogated or waived without the prior concurrence of ADB.

## ARTICLE V

## Suspension; Acceleration of Maturity

Section 5.01. The following is specified as an additional event for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 9.01(l) of the Loan Regulations: SAWACO shall have failed to perform any of its obligations under the Subsidiary Loan 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: the event specified in Section 5.01 of this Loan Agreement shall have occurred.

## ARTICLE VI

## Effectiveness

Section 6.01. The following is specified as an additional condition to the effectiveness of this Loan Agreement for the purposes of Section 10.01(f) of the Loan Regulations: the Subsidiary Loan Agreement, in form and substance satisfactory to ADB, shall have been duly executed and delivered on behalf of the Borrower and SAWACO, and shall have become fully effective and binding upon the Borrower and SAWACO in accordance with its terms, subject only to the effectiveness of this Loan Agreement.

Section 6.02. The following is specified as an additional matter, for the purposes of Section 10.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: that the Subsidiary Loan Agreement has been duly executed and delivered on behalf of the Borrower and SAWACO, and is legally binding upon the parties in accordance with its terms, subject only to the effectiveness of this Loan Agreement.

Section 6.03. 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 SAWACO as its agent for the purposes of taking any action or entering into any agreement required or permitted under Sections 3.02 and 3.03 of this Loan Agreement and under Sections 6.01, 6.02, and 6.03 of the Loan Regulations.

Section 7.02. Any action taken or any agreement entered into by SAWACO 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 SAWACO 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 Governor of 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 Vietnam
47 – 49 Ly Thai To
Hanoi, Viet Nam

Facsimile Numbers:

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

For ADB

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

Facsimile Numbers:

(632) 636-2444
(632) 636-2336.

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 GIAU
Governor
State Bank of Viet Nam

ASIAN DEVELOPMENT BANK

By _____
AYUMI KONISHI
Country Director
Viet Nam Resident Mission

## SCHEDULE 1

## Description of the Project

1. The objective of the Viet Nam Water Sector Investment Program (VWSIP) is the sustainable provision of safe water in Viet Nam through improvement in the efficiency of Vietnamese water utilities.

2. As a part of the VWSIP, the Project aims to increase coverage of households in Ho Chi Minh City with reliable piped water supply and improve the efficiency of SAWACO's operations.

3. The Project shall consist of:

(i) Constructing 10 kilometers (km) of a 2,400 mm treated water pipeline to extend and strengthen transmission capacity to achieve reliable delivery of continuous water supply of adequate pressure;

(ii) Repairing and replacing pipes to extend coverage and reduce non-revenue water;

(iii) Implementing an Information and Communication Technology program that encompasses the following:

a) Strengthen the operational management of SAWACO with integrated software and sustained training to improve billing; accounting systems; and other related financial information systems;

b) Human resources development;

c) Business and strategic planning and management information systems;

d) A supervisory control and data acquisition system / Distribution Control Centre and geographical information system in planning and operation for asset management and improved operation;

(iv) Supporting SAWACO in developing climate change mitigation and disaster management plans and water conservancy plans; in achieving ISO Certification for performance benchmarking and continuous improvement process; and in implementing social development activities (Information Education Communication, Gender Action Plan); and

(v) Consulting services for detailed design and construction supervision.

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

## SCHEDULE 2

## Amortization Schedule

## (Viet Nam Water Sector Investment Program – Project 1)

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 %) |
|---|---|
| 1 August 2016 | 0.827816 |
| 1 February 2017 | 0.869207 |
| 1 August 2017 | 0.912667 |
| 1 February 2018 | 0.958301 |
| 1 August 2018 | 1.006216 |
| 1 February 2019 | 1.056526 |
| 1 August 2019 | 1.109353 |
| 1 February 2020 | 1.164820 |
| 1 August 2020 | 1.223061 |
| 1 February 2021 | 1.284214 |
| 1 August 2021 | 1.348425 |
| 1 February 2022 | 1.415846 |
| 1 August 2022 | 1.486639 |
| 1 February 2023 | 1.560971 |
| 1 August 2023 | 1.639019 |
| 1 February 2024 | 1.720970 |
| 1 August 2024 | 1.807019 |
| 1 February 2025 | 1.897369 |
| 1 August 2025 | 1.992238 |
| 1 February 2026 | 2.091850 |
| 1 August 2026 | 2.196442 |
| 1 February 2027 | 2.306264 |
| 1 August 2027 | 2.421578 |
| 1 February 2028 | 2.542657 |
| 1 August 2028 | 2.669789 |
| 1 February 2029 | 2.803279 |
| 1 August 2029 | 2.943443 |

Schedule 2

| Payment Due | Installment Share (Expressed as a %) |
|---|---|
| 1 February 2030 | 3.090615 |
| 1 August 2030 | 3.245146 |
| 1 February 2031 | 3.407403 |
| 1 August 2031 | 3.577773 |
| 1 February 2032 | 3.756662 |
| 1 August 2032 | 3.944495 |
| 1 February 2033 | 4.141720 |
| 1 August 2033 | 4.348806 |
| 1 February 2034 | 4.566246 |
| 1 August 2034 | 4.794558 |
| 1 February 2035 | 5.034286 |
| 1 August 2035 | 5.286000 |
| 1 February 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

3. The amount allocated to Category 8 is for financing interest 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.

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 to be funded through the imprest account for the next 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 $200,000.

Retroactive Financing

7. Withdrawals from the Loan Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, but not earlier than 12 months before the date of this Loan Agreement in connection with (a) acquisition of land and compensation for non-land assets, (b) resettlement allowances, (c) incremental expenses for the PMU; (d) consulting services; and (e) the construction of a 10 km transmission treated water pipeline, subject to a maximum amount equivalent to 10% of the Loan amount.

Attachment to Schedule 3

**TABLE**

| ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Viet Nam Water Sector Investment Program – Project 1) | | | |
|---|---|---|---|
| **CATEGORY** | | | **ADB FINANCING** |
| **Number** | **Item** | **Total Amount Allocated for ADB Financing $ Category** | **Percentage and Basis for Withdrawal from the Loan Account** |
| 1 | Works | 63,500,000 | 100 percent of total expenditure claimed* |
| 2 | ICT Equipment and NRW and Network Extension (Goods) | 26,000,000 | 100 percent of total expenditure claimed* |
| 3 | Climate Change Adaptation and Mitigation | 450,000 | 100 percent of total expenditure claimed* |
| 4 | Safeguards | 1,900,000 | 100 percent of total expenditure claimed* |
| 5 | Consulting Services | 6,940,000 | 100 percent of total expenditure claimed* |
| 6 | Project Management | 1,960,000 | 100 percent of total expenditure claimed* |
| 7 | Contingencies | 27,250,000 | |
| 8 | Interest | 10,000,000 | |
| | Total | 138,000,000 | |

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

## SCHEDULE 4

## Procurement of Goods, Works and Consulting Services

General

1. The procurement of Goods, Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.

2. All terms used and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting 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. SAWACO 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. SAWACO 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 approval of such change by the Borrower and ADB.

Consulting Services

7. Except as ADB may otherwise agree, and except as set forth in the paragraph below, SAWACO shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

8. SAWACO shall apply the following methods for selecting and engaging the specified consulting services, in accordance with, among other things, the procedures set forth in the Procurement Plan:

(a) Quality-Based Selection for Social Development Services, Water Conservation Plan and Network Assistance; and

(b) Least-Cost Selection for Disaster Management Plan, Independent Resettlement Monitoring, and Audit.

9. SAWACO shall recruit the individual consultants for Project management and operation assistance in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

10. (a) SAWACO 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) SAWACO 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.

11. SAWACO shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the consulting services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

12. Contracts procured under international competitive bidding procedures, contracts for Consulting Services, and the first contracts for Goods and Works procured under national competitive bidding procedures 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. MPI shall be the Coordinating Agency for the Facility. It shall be responsible for the overall supervision and execution of VWSIP, including but not limited to preparation of the PFRs; inter-ministry coordination as needed; monitoring and evaluation of the Investment Program and the Project; and preparation of semi-annual and annual progress reports.

2. SAWACO shall be the Project Executing Agency. The Borrower and SAWACO 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 SAWACO and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

Financial Matters

3. The Borrower shall ensure that, if SAWACO's tariff revenues do not meet full cost recovery, any shortfall shall be funded through subsidy from the Ho Chi Minh City municipal budget, which shall be used exclusively for capital investment or the financing of pro-poor policies.

4. The Borrower shall ensure that any subsidies shall be phased out following implementation of a new tariff roadmap, which shall be agreed between ADB, Ho Chi Minh City People's Committee and SAWACO during the midterm review mission.

Environment

5. The Borrower, through SAWACO, shall ensure that the Project is developed, conducted, implemented and maintained in accordance with the Borrower's applicable laws and regulations and ADB's *Safeguard Policy Statement* (2009). If there is any discrepancy between the Borrower's laws and regulations and ADB's *Safeguard Policy Statement*, the requirements of ADB's policy shall apply.

6. The Borrower, through SAWACO, shall ensure that (a) the EMP in the IEE is implemented in accordance with its terms so that all adverse environmental impacts during construction and operation of the Project are mitigated, and in the event of any unanticipated adverse environmental impacts, such impacts are reported to ADB and remedial actions taken to mitigate the impacts in consultation with the affected persons and ADB; (b) should there be changes in the Project design that would cause significant environmental impacts that are not included in the scope of the current IEE, a supplementary environmental assessment is completed in relation to such change in compliance with ADB's *Safeguard Policy Statement*; (c) the IEE and EMP are updated as necessary in the course of Project implementation and submitted to ADB for approval, and the corresponding approval from the Ministry of Natural Resources and Environment shall be obtained; and (d) semi-annual monitoring reports on the implementation of the EMP are submitted to ADB.

7. The Borrower, through SAWACO, shall ensure that (a) all Works and consultant contract documents under the Project contain the IEE and the EMP and include a requirement to comply with them; and (b) compliance by contractors with the EMP is closely monitored.

Resettlement

8. The Borrower, through SAWACO, shall ensure that any involuntary resettlement will be carried out in accordance with the agreed RF and RP. In case of differences between the Borrower's laws and regulations and ADB's *Safeguard Policy Statement*, ADB's policy will prevail.

9. The Borrower, through SAWACO, shall ensure that (a) no land acquisition or resettlement activities will commence until the updated RP has been prepared following detailed design and has been reviewed and approved by ADB; (b) project-affected people are compensated at replacement cost and assisted before they are displaced from their houses, land, and assets; (c) no affected people will be displaced until suitable alternative land within the same or a neighboring commune has been allocated to them or compensation has been paid that is sufficient to purchase suitable alternative land within the same or a neighboring commune; (d) resettlement activities are monitored both internally and by an independent resettlement monitoring organization, and internal and external monitoring reports, including resettlement audit statements verified by the external resettlement monitor, are submitted to ADB every 6 months and uploaded onto SAWACO's website within 2 weeks of their submission, until resettlement and income restoration programs are complete.

Indigenous Peoples

10. The Borrower, through SAWACO, shall ensure that, should indigenous people be found in the project area, the Project will be implemented in accordance with the IPPF, applicable laws and regulations of the Borrower and ADB's *Safeguard Policy Statement.*

Labor and Health

11. The Borrower, through SAWACO, shall ensure that (a) all Works contractors under the Project (i) comply with all applicable labor laws and related international treaty obligations and do not employ child labor, (ii) do not provide differential wages or benefits to men and women for work of equal value, (iii) provide basic water and sanitation facilities for men and women in the construction sites, (iv) provide safe working conditions for male and female workers, (v) provide day-care services for the child care needs of female construction workers, and (vi) carry out HIV/AIDS, STI and human trafficking education and awareness campaigns in the construction sites; and (b) all Works contracts contain provisions requiring compliance with the above requirements and provide sufficient budget and that compliance is closely monitored.

Schedule 5

Gender and Development

12. The Borrower, through SAWACO, shall ensure that the gender action plan agreed under the Project will be implemented in a timely manner, including the following specific actions: (a) respective ward level resettlement committees will include representatives from the commune Women's Union, and poor women representatives from affected households; (b) where land or land use rights are granted to affected persons for compensation purposes, when applicable, they are jointly registered in the names of both the husband and wife; (c) IEC is targeted to men and women; (d) water supply coverage includes 100% of female headed households in the relevant project areas; (e) SAWACO takes all reasonable and necessary steps torecruit at least 50% women in the PMU, and (f) the PMU will develop sex-disaggregated monitoring indicators for purposes of monitoring and reports. In addition, SAWACO shall take all reasonable and necessary steps to encourage women's participation in planning and implementation of the Project, including gender-sensitive provisions in the bidding and contract documents for Works as provided in paragraph 11 above.

Governance and Anticorruption

13. The Borrower, through SAWACO, shall ensure that PMU staff are fully knowledgeable of and comply with the Borrower's and ADB's procedures, including, but not limited to, procedures for (i) implementation, (ii) procurement, (iii) use of consultants, (iv) disbursement, (v) reporting, (vi) monitoring, and (vii) prevention of fraud and corruption. The Borrower shall ensure that all activities under the Project shall comply with ADB's *Anticorruption Policy* (1998, as amended to date) particularly in respect of the sections of the Procurement Guidelines and the Consulting Guidelines that relate to fraud and corruption, and where appropriate, ensure that relevant provisions of ADB's *Anticorruption Policy* are included in all bidding documents for the Project. The Borrower (a) acknowledges ADB's right to investigate, directly or through its agents, any alleged corrupt, fraudulent, collusive and coercive practices relating to the Project, and (b) agrees to cooperate fully with, and cause SAWACO to cooperate fully with, any such investigation and to extend all necessary assistance, including providing access to all relevant books and records, as may be necessary for the satisfactory completion of any such investigation.

14. The Borrower, through SAWACO, shall ensure that the PMU monitors and inspects all contractors' activities related to fund withdrawals and settlements. The Borrower shall further ensure that all contracts financed by the Loan proceeds include provisions specifying the ADB's right to audit and examine the records and accounts of contractors, suppliers, consultants and other service providers as they relate to the Project. The Borrower, through MPI and SAWACO, shall ensure that the PMU publicly discloses on their websites information on how Loan proceeds are being used, presenting procurement contract awards, including for each such contract (a) the list of participating bidders, (b) name of the winning bidder, (c) basic details on bidding procedures adopted, (d) amount of the contract awarded, (e) list of Goods and/or Consulting Services purchased, and (f) intended and actual utilization of Loan proceeds under each contract. The website will be updated within 2 weeks after each award of contract.

15. The Borrower, through SAWACO, shall within 9 months after the Effective Date establish a grievance redress mechanism to receive and resolve complaints or act on reports by stakeholders of misuse of funds or other irregularities.

Schedule 5

Project Performance Monitoring and Evaluation

16. The Borrower, through SAWACO, shall ensure that the PMU will undertake systematic project performance monitoring and analysis throughout the life of the Project and integrate it with the existing management information systems. Initially, the monitoring system shall use social assessment and socioeconomic surveys as baseline data for subsequent performance monitoring, and shall establish pre-project social and economic living conditions for the direct project beneficiaries. A second survey shall be carried out on project completion and a third survey after a period of not less than 5 years after project completion. The baseline and impact surveys will include appropriate control areas and shall assess all interventions under the Project, including resettlement and other safeguard interventions that affect the livelihood of project beneficiaries. In addition, a set of indicators taken from benchmarking data, reflecting water tariffs, service coverage and access and operational improvement will be monitored.