LOAN NUMBER 3235-VIE (SF)

LOAN AGREEMENT
(Special Operations)

(Strengthening Sustainable Urban Transport for Ha Noi Metro Line 3 Project)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 9 FEBRUARY 2015

LOAN AGREEMENT
(Special Operations)

LOAN AGREEMENT dated 9 February 2015 between SOCIALIST REPUBLIC OF VIET NAM ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

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

(B) the SF Part 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 has also applied to the Clean Technology Fund ("CTF") for a loan ("CTF Loan") in an amount not exceeding the equivalent of forty-eight million nine hundred fifty thousand Dollars ($48,950,000) to be administered by ADB and upon the terms and conditions set forth in a loan agreement between the Borrower and ADB ("CTF Loan Agreement") for the purposes of a part of the Project as described in Schedule 2 to the CTF Loan Agreement ("CTF Part", and together with the SF Part "Project"); and

(D) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein and in the project agreement of even date herewith between ADB and HPC ("Project Agreement").

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein.

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 (2013, as amended from time to time);

(b) "Consulting Services" means the services to be financed out of the proceeds of the Loan and CTF Loan as described in paragraph 2 of Schedule 1 to this Loan Agreement and para 2 of Schedule 2 to the CTF Loan Agreement;

(c) "CTF" means ADB's Clean Technology Fund;

(d) "DOT" means the Borrower's Ha Noi Department of Transport or any successor thereto;

(e) "EMP" or "Environmental Management Plan" means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;

(f) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(g) "GAP" means gender action plan for the Project, including any update thereto, prepared and submitted by HPC and cleared by ADB;

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

(i) "HPC" means the people's committee of Ha Noi City within the territory of the Borrower;

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

(k) "IA" or "Project Implementation Agency" means DOT through UTPMU or any successors thereto acceptable to ADB, which are responsible for implementation of the Project;

(l) "IEE" or "Initial Environmental Examination" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by HPC and cleared by ADB;

(m) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2012, as amended from time to time);

(n) "O&M" means operations and maintenance;

(o) "PAM" means the project administration manual for the Project dated 22 October 2014 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 (2013, as amended from time to time);

(q) "Procurement Plan" means the procurement plan for the Project dated 22 October 2014 and agreed between HPC and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(r) "Project" means the SF Part and the CTF Part as described in recital (C) hereinabove;

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

(t) "Project facilities" means equipment to be provided and the facilities to be constructed, upgraded, or rehabilitated under the Project;

(u) "Safeguards Monitoring Report" means each report prepared and submitted by HPC to ADB that describes progress with implementation of and compliance with the EMP, including any corrective and preventative actions;

(v) "SPS" or "Safeguard Policy Statement" means ADB's Safeguard Policy Statement (2009);

(w) "Subsidiary Loan Agreement" means the agreement between the Borrower and HPC referred to in Section 3.01 of the CTF Loan Agreement;

(x) "UTPMU" means urban transport project management unit under the DOT; and

(y) "Works" means construction or civil works to be financed out of the proceeds of the CTF Loan, including services such as drilling or mapping, and the 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. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to two million eight hundred ten thousand Special Drawing Rights (SDR2,810,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 2% per annum during the grace period and thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in subsection (a) hereinabove 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 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 June and 1 December in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be the Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. The Borrower shall make the proceeds of the Loan available to HPC on a grant basis upon terms and conditions satisfactory to ADB and shall cause HPC to apply such proceeds to the financing of expenditures on the SF Part of 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, the items of expenditure to be financed out of the proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

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 SF Part of the Project.

Section 3.05. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 June 2019 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. 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 or shall cause to enable ADB's representatives to inspect SF Part of the Project, the Goods, Works, if any, and Consulting Services and any relevant records and documents.

Section 4.03. The Borrower shall take all actions which shall be necessary on its part to enable the Project Executing Agency 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 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 8.01(m) of the Loan Regulations: the CTF Loan shall have become liable for suspension or cancellation or shall have become repayable prior to its agreed maturity date.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) 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 9.01(f) of the Loan Regulations: the CTF Loan Agreement shall have been duly executed and delivered on behalf of the Borrower, and all conditions precedent to its effectiveness shall have been fulfilled.

Section 6.02 The following is specified as an additional matter, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB: the matter specified in Section 6.01 of this Loan Agreement shall have been satisfied.

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 9.04 of the Loan Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The State Bank of Vietnam of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

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

Facsimile Numbers:

(844) 38250-612
(844) 38258-385.

For ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro 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
Governor
State Bank of Viet Nam

ASIAN DEVELOPMENT BANK

By _____
TOMOYUKI KIMURA
Country Director
Viet Nam Resident Mission

SCHEDULE 1

Description of the SF Part of the Project

1. The objective of the Project is to improve the integration of Metro Line 3 stations with other modes of public and private transport in Ha Noi.

2. The SF Part of the Project shall comprise the following output:

Public Transport Policy Developed: This output will provide Consulting Services to develop (a) a station access management system and enforcement measures to ensure clear pedestrian access and proper use of public space by venders around Metro Line 3 stations; (b) a station parking policy to provide for the efficient flow of vehicles to and from the Metro Line 3 stations; and (c) a policy framework on public transport ticketing, the pricing of public and private transport in Ha Noi to promote a modal shift from private vehicles to the public transport system.

3. The Project is expected to be completed by 31 December 2018.

SCHEDULE 2

Amortization Schedule

(Strengthening Sustainable Urban Transport for Ha Noi Metro Line 3 Project)

Date Payment Due	Payment of Principal (expressed in Special Drawing Rights)*
01 Jun 2020	70,250
01 Dec 2020	70,250
01 Jun 2021	70,250
01 Dec 2021	70,250
01 Jun 2022	70,250
01 Dec 2022	70,250
01 Jun 2023	70,250
01 Dec 2023	70,250
01 Jun 2024	70,250
01 Dec 2024	70,250
01 Jun 2025	70,250
01 Dec 2025	70,250
01 Jun 2026	70,250
01 Dec 2026	70,250
01 Jun 2027	70,250
01 Dec 2027	70,250
01 Jun 2028	70,250
01 Dec 2028	70,250
01 Jun 2029	70,250
01 Dec 2029	70,250
01 Jun 2030	70,250
01 Dec 2030	70,250
01 Jun 2031	70,250
01 Dec 2031	70,250
01 Jun 2032	70,250
01 Dec 2032	70,250
01 Jun 2033	70,250
01 Dec 2033	70,250
01 Jun 2034	70,250
01 Dec 2034	70,250
01 Jun 2035	70,250
01 Dec 2035	70,250
01 Jun 2036	70,250
01 Dec 2036	70,250
01 Jun 2037	70,250
01 Dec 2037	70,250
01 Jun 2038	70,250
01 Dec 2038	70,250

Date Payment Due	Payment of Principal (expressed in Special Drawing Rights)*
01 Jun 2039	70,250
01 Dec 2039	70,250
TOTAL	**2,810,000**

* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

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 the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table.)

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Interest Charge

3. The amount allocated to Category 2 is for financing the interest charge on the Loan during the implementation period of the Project.

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.

Attachment to Schedule 3

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (Strengthening Sustainable Urban Transport for Ha Noi Metro Line 3 Project)			
Number	**Item**	**Total Amount Allocated for ADB Financing SDR**	**Basis for Withdrawal from the Loan Account**
		Category	
1	Consulting Services (Public Transport Policy Development)	2,349,000	85% of total expenditure claimed*
2	Interest Charge	147,000	100% of total amount due
3	Unallocated	314,000	
	Total	**2,810,000**	

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

SCHEDULE 4

Procurement of Consulting Services

General

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

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

Consulting Services

3. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

Industrial or Intellectual Property Rights

4. The Borrower 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

5. All contracts for Consulting Services under the Project 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; Financial Matters

Implementation Arrangements

1. The Borrower and the Project Executing Agency 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.

2. The Borrower shall cause HPC to ensure through UTPMU that throughout Project implementation, its Project implementation division is fully equipped with professionally skilled staff, reasonable office space, equipment, and adequate financial resources required for the smooth and timely implementation of the Project.

Counterpart Financing

3. The Borrower shall, and shall cause HPC to, ensure that: (a) counterpart funds necessary for the smooth and successful completion of the Project are provided in a timely manner; (b) additional funds, as and when needed, are provided to meet any Project shortfall or cost overruns; and (c) adequate funds are provided, in a timely manner, for the O&M of the Project facilities.

Integration of Public Transport

4. The Borrower shall cause HPC to ensure that (a) sector development studies to address public transport sustainability issues on the street management, traffic, enforcement, parking and transport pricing under the Project are carried out; and (b) recommendations from the said studies are included in the relevant transport policies or regulations and implemented in a timely manner.

O&M of Project Facilities

5. The Borrower shall, through HPC, cause UTPMU to ensure that (a) O&M mechanism for the Project is established; (b) the Project facilities procured, constructed or upgraded are maintained properly; and (c) adequate budget and resources are provided for O&M of the said Project facilities.

Environment

6. The Borrower shall, through HPC, cause UTPMU to ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

7. The Borrower shall, through HPC, cause UTPMU to ensure that (a) the relevant provisions from the EMP are included in all bidding documents and Works contracts for the Project regardless of the source of financing; and (b) in case of any discrepancy or inconsistency among the Borrower's laws, regulations and procedures relating to environment, health and safety and the SPS, the SPS shall prevail.

Involuntary Resettlement and Indigenous Peoples

8. The Borrower shall, through HPC, cause UTPMU to ensure that the Project does not have land acquisition and involuntary resettlement impacts, and any indigenous peoples impacts all within the meaning of SPS. In the event that the Project does have any such impacts, the Borrower shall cause HPC to take all steps required to ensure that the Project complies with the applicable laws and regulations of the Borrower and with the SPS.

Human and Financial Resources to Implement Safeguards Requirements

9. The Borrower shall, and shall cause HPC to, make available necessary budgetary and human resources to fully implement the EMP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

10. The Borrower shall, through HPC, cause UTPMU to ensure that all bidding documents and contracts for Works to be financed by CTF Loan contain provisions that require contractors to:

(a) comply with the measures relevant to the contractor set forth in the IEE, and the EMP (to the extent they concern impacts on affected people during construction), and any corrective or preventative actions set forth in a Safeguards Monitoring Report;

(b) make available a budget for all such environmental and social measures;

(c) provide HPC with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the Project, the IEE, and the EMP; and

(d) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-Project condition upon the completion of construction.

Safeguards Monitoring and Reporting

11. The Borrower shall, through HPC, cause UTPMU, do the following;

(a) submit semi-annual Safeguards Monitoring Reports in respect of implementation of and compliance with the Environmental Safeguards and the EMP and disclose relevant information from such reports to affected persons promptly upon submission;

(b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the Project, the IEE, and the EMP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and

(c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP, promptly after becoming aware of the breach.

Prohibited List of Investments

12. The Borrower shall, and shall cause HPC to, ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Gender and Development

13. The Borrower shall, through HPC, cause UTPMU to ensure that: (a) the GAP is implemented and adequately resourced, supervised and monitored in accordance with ADB's *Policy on Gender and Development* (1998); and (b) measures under the GAP including, but not be limited to the following are implemented effectively: (i) accessibility improvement design features include safe pedestrian access and adequate lighting and installation of CCTV near exits and entrances of stations and subways, bus stops, taxi and xeom stands; (ii) priority seating, handrails, allocated waiting spaces for women in all new bus stops; (iii) 30% of the unskilled Works jobs are provided to women; (iv) ticketing and fare pricing includes lower fares, flat rates, day passes for multiple segments to increase affordability and access; (v) pedestrian friendly traffic management and traffic calming measures, e.g., lights, traffic bumps, traffic police, etc., near all stations and feeder bus routes; (vi) all policy and regulations proposed by the Project are based on gender analysis and address gender issues in inter-modal public transport; and (vii) gender indicators are included in the project monitoring and evaluation system and the Project regularly reports progress against GAP implementation.

Governance and Anticorruption

14. The Borrower, HPC and the IA shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

15. The Borrower shall, through HPC, cause UTPMU to ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agency and all contractors, suppliers, consultants, and other service providers as they relate to the Project.

Schedule 5

Grievance Redress Mechanism

16. The Borrower shall, through HPC, cause UTPMU to ensure that within 3 months of the Effective Date, complaint and problem management mechanisms, acceptable to ADB and in accordance with the Borrower's applicable laws and regulations, are established 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 as part of the quarterly progress reports. 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 social or other issues.

Health and Labor Standards

17. The Borrower shall, through HPC, cause UTPMU to ensure that Works contracts and bidding documents under the CTF Part of the Project include specific provisions requiring contractors to comply with all core labor standards and the applicable labor laws and regulations of the Borrower including stipulations related to employment on: (a) prohibition of child labor; (b) equal pay for equal work of equal value regardless of gender, ethnicity or caste; (c) timely payment of wages; (d) elimination of forced labor; (e) use of local unskilled labor, as applicable; and (f) the requirement to disseminate information on sexually transmitted diseases including HIV/AIDS to employees and local communities surrounding the Project sites. The Borrower shall, and shall cause HPC to ensure that records of labor employment are properly maintained and tracked in the Project performance management system.