GRANT NUMBER 0365-VIE(EF)

GRANT AGREEMENT
(Asian Clean Energy Fund)

(Energy Efficiency for Ho Chi Minh City Water Supply Project)

between

SOCIALIST REPUBLIC OF VIET NAM

and

ASIAN DEVELOPMENT BANK

DATED 26 May 2014

GRANT AGREEMENT
(Asian Clean Energy Fund)

GRANT AGREEMENT dated _____ between SOCIALIST REPUBLIC OF VIET NAM ("Recipient") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Recipient has applied to the Asian Clean Energy Fund under the Clean Energy Financing Partnership Facility for a grant to be administered by ADB for the purposes of the Project described in Schedule 1 to this Grant Agreement;

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

(C) ADB has agreed to administer the grant to the Recipient from the Asian Clean Energy Fund under the Clean Energy Financing Partnership Facility upon the terms and conditions hereinafter set forth and in the Project Agreement of even date herewith between ADB and SAWACO.

NOW THEREFORE the parties agree as follows:

ARTICLE I

Grant Regulations; Definitions

Section 1.01. All provisions of the Externally Financed Grant Regulations of ADB, dated 8 April 2009 ("Grant Regulations"), are hereby made applicable to this Grant Agreement with the same force and effect as if they were fully set forth herein.

Section 1.02. The definitions set forth in the Grant Regulations are applicable to this Grant Agreement unless the context requires otherwise. In addition, the following terms have the following meanings:

(a) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Recipients (2013, as amended from time to time);

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

(c) "EMP" means the Environmental Management Plan included in the IEE prepared for Loan No. 2754-VIE: Viet Nam Water Sector Investment Program – Project 1 ("Loan No. 2754-VIE"), and agreed between the Recipient and ADB;

(d) "GHG" means greenhouse gas;

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

(f) "HCMC" means Ho Chi Minh City;

(g) "ICE" means information, communication and education;

(h) "IEE" means the initial environmental examination prepared for Loan No. 2754-VIE by SAWACO and approved by ADB;

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

(j) "M&E" means monitoring and evaluation;

(k) "PAM" means the means the project administration manual for the Project dated 30 July 2013 and agreed between SAWACO and ADB, as updated from time to time in accordance with the respective administrative procedures of SAWACO and ADB;

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

(m) "Procurement Guidelines" means ADB's Procurement Guidelines (2013, as amended from time to time);

(n) "Procurement Plan" means the procurement plan for the Project dated 30 July 2013 and agreed between the Recipient and ADB, as updated from time to time in accordance with the Procurement Guidelines, Consulting Guidelines, and other arrangements agreed with ADB;

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

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

(q) "RF" means the Resettlement Framework prepared for Loan No. 2754-VIE; and

(r) "SAWACO" means the Saigon Water Corporation or any successor thereto.

ARTICLE II

The Grant

Section 2.01. ADB agrees to make available to the Recipient a grant from the Asian Clean Energy Fund under the Clean Energy Financing Partnership Facility on terms and conditions set forth in this Grant Agreement an amount not exceeding two million Dollars ($2,000,000).

ARTICLE III

Use of Proceeds of the Grant

Section 3.01. The Recipient shall cause the Project Executing Agency to apply the proceeds of the Grant to the financing of expenditures on the Project in accordance with the provisions of this Grant Agreement and the Project Agreement.

Section 3.02. The proceeds of the Grant shall be allocated and withdrawn in accordance with the provisions of Schedule 2 to this Grant Agreement, as such Schedule may be amended from time to time by agreement between the Recipient and ADB.

Section 3.03. Except as ADB may otherwise agree, the Recipient shall procure, or cause to be procured, the items of expenditure to be financed out of the proceeds of the Grant in accordance with the provisions of Schedule 3 to this Grant Agreement.

Section 3.04. Withdrawals from the Grant Account in respect of Goods and Consulting Services shall be made only on account of expenditures relating to:

(a) Goods which are produced in and supplied from and Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and

(b) Goods and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.05. The Grant Closing Date for the purposes of Section 8.02 of the Grant Regulations shall be 30 June 2016 or such other date as may from time to time be agreed between the Recipient and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out of the Project and operation of the Project facilities, the Recipient shall perform, or cause to be performed, all obligations set forth in Schedule 4 to this Grant Agreement and the Project Agreement.

Section 4.02. The Recipient 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.

Section 4.03. The Recipient shall enable ADB's representatives to inspect the Project, the goods financed out of the proceeds of the Grant, and any relevant records and documents.

Section 4.04. The Recipient acknowledges and agrees that this Grant Agreement is entered into by ADB, not in its individual capacity, but as grant administrator for the Asian Clean Energy Fund under the Clean Energy Financing Partnership. Accordingly, the Recipient agrees that (i) it may only withdraw Grant proceeds to the extent that ADB has received proceeds for the Grant from the Asian Clean Energy Fund under the Clean Energy Financing Partnership Facility; and (ii) that ADB does not assume any obligations or responsibilities of the Asian Clean Energy Fund under the Clean Energy Financing Partnership Facility in respect of the Project or the Grant other than those set out in this Grant Agreement.

ARTICLE V

Effectiveness

Section 5.01. A date 90 days after the date of this Grant Agreement is specified for the effectiveness of the Grant Agreement for the purposes of Section 9.04 of the Grant Regulations.

ARTICLE VI

Delegation of Authority

Section 6.01. The Recipient 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 Grant Agreement and under Sections 5.01, 5.02, and 5.03 of the Grant Regulations.

Section 6.02. Any action taken or any agreement entered into by SAWACO pursuant to the authority conferred under Section 6.01 of this Grant Agreement shall be fully binding on the Recipient and shall have the same force and effect as if taken by the Recipient.

Section 6.03. The authority conferred on SAWACO under Section 6.01 of this Grant Agreement may be revoked or modified by agreement between the Recipient and ADB.

ARTICLE VII

Miscellaneous

Section 7.01. The Governor of the State Bank of Vietnam of the Recipient is designated as representative of the Recipient for the purposes of Section 11.02 of the Grant Regulations.

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

For the Recipient

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

Facsimile Numbers:

(84-4) 3 8250-612
(84-4) 3 8258-385.

For ADB

6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

+63 2 636-2444
+63 2 636-2336.

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

SOCIALIST REPUBLIC OF VIET NAM

By _____
NGUYEN VAN BINH
Governor
State Bank of Vietnam

ASIAN DEVELOPMENT BANK

By _____
TOMOYUKI KIMURA
Country Director
Viet Nam Resident Mission

SCHEDULE 1

Description of the Project

1. The expected impact of the Project is improved operational performance of SAWACO. The expected outcome of the Project is improved energy efficiency of SAWACO operations.

2. The Project shall comprise 2 outputs:

Output 1: Capacity development

This output comprises:

(a) M&E of the physical investment output; and

(b) support for an ICE campaign raising awareness about energy savings and training for capacity building in energy savings for 3,000 staff and management of SAWACO.

Output 2: Physical investment

This output comprises:

(a) installation of frequency converters for 3 raw water pumps at Tan Hiep Treatment Plant, including controls for the pumps to maintain target pressure;

(b) mobile monitoring laboratory; and

(c) quality calibration technology and central air conditioning systems that use new technology to reduce water and carbon footprints and the GHG emissions at the Thu Duc Water Treatment Plant.

3. The Project shall include the provision of Consulting Services.

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

SCHEDULE 2

Allocation and Withdrawal of Grant 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 Grant and the allocation of the Grant proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category of the Table.)

Basis for Withdrawal from the Grant Account

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

Reallocation

3. Notwithstanding the allocation of Grant proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Grant allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Recipient, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Grant 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 Grant allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Recipient, reallocate such excess amount to any other Category.

Disbursement Procedures

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

Retroactive Financing

5. Withdrawals from the Grant 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 Grant Agreement, in connection with eligible expenditures, subject to a maximum amount equivalent to 20% of the Grant amount.

Attachment to Schedule 2

TABLE

ALLOCATION AND WITHDRAWAL OF GRANT PROCEEDS (Energy Efficiency for Ho Chi Minh City Water Supply Project)			
CATEGORY			ACEF FINANCING
Number	Item	Total Amount Allocated for ACEF Financing $ Category	Percentage and Basis for Withdrawal from the Grant Account
1	Consultants	500,000	100% of total expenditure claimed*
2	Equipment for Energy Savings	1,500,000	100% of total expenditure claimed*
	TOTAL	2,000,000	

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

SCHEDULE 3

Procurement of Goods and Consulting Services

General

1. The procurement of Goods 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 Grant Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Goods

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

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

4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Recipient 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.

National Competitive Bidding

5. The Recipient and ADB shall ensure that, prior to the commencement of any procurement activity under national competitive bidding, the Recipient's national competitive bidding procedures are consistent with the Procurement Guidelines. Any modifications or clarifications to such procedures agreed between the Recipient 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 Recipient and ADB.

Domestic Preference

6. The Recipient 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.

Consulting Services

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

8. The Recipient 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: Consultants' Qualifications Selection for ICE.

9. The Recipient shall recruit the individual consultants for monitoring and evaluation in accordance with procedures acceptable to ADB for recruiting individual consultants.

Industrial or Intellectual Property Rights

10. (a) The Recipient shall ensure that all Goods 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 of any third party.

(b) The Recipient shall ensure that all contracts for the procurement of Goods 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. The Recipient 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 of any third party.

ADB's Review of Procurement Decisions

12. Contracts procured under international competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Recipient and ADB and set forth in the Procurement Plan.

SCHEDULE 4

Execution of Project

Implementation Arrangements

1. The Recipient shall ensure and shall cause SAWACO to 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 Grant Agreement, the provisions of this Grant Agreement shall prevail.

Environment

2. The Recipient, through SAWACO, shall ensure that the Project is developed, conducted, implemented and maintained in accordance with the Recipient's applicable laws and regulations, including those laws implementing host country's obligations under international law, particularly the Montreal Protocol on Substances that Deplete the Ozone Layer and ADB's Safeguard Policy Statement (2009), including the prohibited Investment Activities List (Appendix 5 of the Safeguard Policy Statement). If there is any discrepancy between the Recipient's laws and regulations and ADB's Safeguard Policy Statement, the requirements of ADB's policy shall apply.

3. The Recipient, 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) semiannual monitoring reports on the implementation of the EMP are submitted to ADB.

4. The Recipient, through SAWACO, shall ensure that (a) all 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

5. The Recipient, through SAWACO, shall ensure that any involuntary resettlement (if applicable) will be carried out in accordance with the agreed RF. In case of differences between the Recipient's laws and regulations and ADB's Safeguard Policy Statement, ADB's policy will prevail.

Labor and Health

6. The Recipient, through SAWACO, shall ensure that (a) all 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) relevant contracts contain provisions requiring compliance with the above requirements and provide sufficient budget and that compliance is closely monitored.

Licenses and Permits

7. The Recipient shall cause SAWACO to ensure that all licenses and permits (if required for the Project in the territory of the Recipient) shall have been duly obtained, or arrangements satisfactory to ADB shall have been made to obtain such licenses and permits within the period of time satisfactory to ADB, and that all obligations related to the Project, as required by the laws and regulations of the Recipient, shall have been met.

Governance and Anticorruption

8. The Recipient, through SAWACO, shall ensure that PMU staff are fully knowledgeable of and comply with the Recipient'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 Recipient 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 Recipient (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.

9. The Recipient, through SAWACO, shall ensure that the PMU monitors and inspects all contractors' activities related to fund withdrawals and settlements. The Recipient shall further ensure that all contracts financed by the Grant 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 Recipient, through MPI and SAWACO, shall ensure that the PMU publicly discloses on their websites information on how Grant 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 Grant proceeds under each contract. The website will be updated within 2 weeks after each award of contract.

10. The Recipient, 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.

Project Performance Monitoring and Evaluation

11. The Recipient, 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.